TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted] 1922

No. [redacted] 396

THE NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY, ILLINOIS CENTRAL RAILROAD COMPANY, AND LOUISVILLE & NASHVILLE RAILROAD COMPANY, APPELLANTS,

vs.

THE STATE OF TENNESSEE, B. A. ENLOE, HARVEY H. HANNAH, JULIAN H. CAMPBELL, MEMBERS OF AND CONSTITUTING THE RAILROAD AND PUBLIC UTILITIES COMMISSION OF THE STATE OF TENNESSEE, ET AL., &c.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF TENNESSEE.

FILED MAY 23, 1922.

(28,943)

(28,943)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1921.

No. 988.

THE NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY, ILLINOIS CENTRAL RAILROAD COMPANY, AND LOUISVILLE & NASHVLLE RAILROAD COMPANY, APPELLANTS,

vs.

THE STATE OF TENNESSEE, B. A. ENLOE, HARVEY H. HANNAH, JULIAN H. CAMPBELL, MEMBERS OF AND CONSTITUTING THE RAILROAD AND PUBLIC UTILITIES COMMISSION OF THE STATE OF TENNESSEE, ET AL., &c.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF TENNESSEE.

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In the District Court of the United States for the Middle District of Tennessee, Nashville Division.

In Equity.

No. 88.

HE STATE OF TENNESSEE, THE RAILROAD AND PUBLIC UTILITIES Commission of Tennessee, and The State of Tennessee on Relation of the Railroad and Public Utilities Commission of Tennessee,

versus

THE UNITED STATES.

TRANSCRIPT OF RECORD.

Original Petition.

(Filed October 21, 1921.)

To the Honorable Judges of the United States District Court for the Middle District of Tennessee, Nashville Division, Sitting in Equity:

Petitioners file this, their original petition, against the Respondent, he United States, and show to the Court as follows:

I.

Petitioners, the Railroad and Public Utilities Commission of the tate of Tennessee, composed as stated in the caption hereof, constitute the administrative agency of the State of Tennessee, empowered under the authority of Chapter 10 of the Acts of the General ssembly of Tennessee of 1897, and Acts amendatory thereof, to supervise and fix the rates, charges and regulations of railroads in Tenessee, and to correct abuses and prevent unjust discrimination and xtortion in the rates of freight and passenger tariffs on the different ailroads operating in Tennessee; and charged by said legislative ct with the duty of taking any and all necessary steps to enforce he provisions of said act and to see that all such laws of the State f Tennessee concerning railroads are enforced and obeyed, and hat violations thereof are promptly prosecuted, etc.

The Petitioner, the State of Tennessee, by and through its duly ppointed and commissioned officers, and by and through its several overnmental subdivisions, counties and municipalities, has been engaged, is now engaged, and will continue to be engaged in the construction, repair and maintenance of public highways through its erritorial boundaries; in the construction and maintenance of some

of which highways and roads, the Petitioner, the State of Tennessee, is acting jointly with its several counties, as governmental subdivisions, and with the Government of the United States, the expenses of which joint highway*d*s is being borne out of the public revenues of the Petitioner, the State of Tennessee, its several counties, and the United States Government.

2 II.

This suit, being of a civil nature, brought in equity, is instituted to enjoin, set aside, annul and suspend, in whole or in part, as the Court may decree, an order of the Interstate Commerce Commission requiring railroads in Tennessee to establish and maintain a schedule of rates and tariffs on intrastate shipments of certain commodities which rates and tariffs are higher in a substantial degree than the rates and tariffs permitted to be charged on intrastate shipments of such commodities by the orders duly made by the Petitioner, the Railroad and Public Utilities Commission.

The order of the Interstate Commerce Commission, to enjoin, annul and suspend which this suit is brought, was made by the Interstate Commerce Commission upon the petition of ten railroad companies doing business in Tennessee, one of which was the Nashville, Chattanooga & St. Louis R*a*ilway, a corporation chartered under the laws of the State of Tennessee, and having and maintaining its principal office, situs and residence in Nashville, Davidson County, Tennessee, within the jurisdiction of this Court, the Middle District of Tennessee, Nashville Division.

In the petition of the Nashville, Chattanooga & St. Louis Railway, and other railroads, filed before the Interstate Commerce Commission, upon which the said order was made, it was prayed that said order be made "after due notice has been given to the State of Tennessee and the authorities thereof." Such notice was given Petitioner, the State of Tennessee, and said Petitioner made its appearance as a party in interest before the Interstate Commerce Commission, resisting the said petition, and protesting against the making of said order, its appearance being made through its administrative agent, the Railroad and Public Utilities Commission. Said Ralroad and Public Utilities Commission of Tennessee was present by its agent at the taking of proof in the investigation ordered by the Interstate Commerce Commission pursuant to said petition, and, after the investigation was completed, filed its brief before the Interstate Commerce Commission, protesting against the making of said order of
3 the Interstate Commerce Commission; all of which, as Petitioners are advised, rendered the Petitioners herein parties in interest to the proceedings before the Interstate Commerce Commission, entitling them and each of them to bring this suit.

Petitioner, the State of Tennessee, in its own name and treasury, and in its various governmental subdivisions, as well as the Respondent, the United States Government, are injuriously affected by said order of the Interstate Commerce Commission, in that its enforcement will require the payment from the treasury of the State of Tennessee,

its various governmental subdivisions, and from the treasury of the United States, large sums of money in freight charges on materials purchased by them, used in the construction of public roads and highways in Tennessee, greatly in excess of the amounts they would be required to pay for such freight rates, but for the making and enforcement of said order of the Interstate Commerce Commission; which fact further entitled the Petitioner, the State of Tennessee, to institute and maintain this suit.

III.

On July 20, 1920, the Interstate Commerce Commission, by an order known and referred to as its order in Ex Parte 74, authorized interstate railroads operating in and through the State of Tennessee to increase their freight transportation rates, switching charges and other charges, twenty five per cent, and, pursuant to said order of the Interstate Commerce Commission, the several railroads referred to put into effect a general increase in their interstate transportation rates, on interstate shipments originating and terminating in the State of Tennessee to the extent authorized by said order. Subsequently, in September, 1920, the several railroads carrying on intrastate freight and passenger traffic in Tennessee, promulgated proportionate advances in their intrastate transportation rates in Tennessee, which increases were suspended by the Railroad and Public Utilities Commission of Tennessee, acting within its statutory authority and power.

After various intermediate steps and orders had been taken, which are not now material, the Railroad and Public Utilities Commission of Tennessee finally, on November 19, 1920 after hearing evidence and argument concerning the proposed advance in intrastate rates, made and issued its order, a certified copy of which is filed herewith,
as Exhibit "A" to this petition. By this order, the several
4 railroads in Tennessee were authorized to increase certain
of their intrastate freight rates in amounts proportionate to the increases in interstate rates authorized by the order of the Interstate Commerce Commission in Ex Parte 74, but further providing as follows:

"It is further ordered, That respondents hereto shall make no advances in their rates on intrastate shipments of sewer pipe (earthen, clay or concrete) car load, over and above the rates on said commodities as in effect immediately prior to the date of this original suspension, and

"It is further ordered, That on car load shipments of stone and gravel moving intrastate between points in Tennessee, when for use in building public highways and consigned to Federal, State, County or Municipal authorities, or their bonafide agents, that carriers respondent thereto shall make no advance in the rates and charges over and above those in effect immediately prior to the effective date of the original suspension on these commodities, and

"It is further ordered, That this order shall continue in effect for a period of not less than two years from date when it shall take effect, unless otherwise ordered by this Commission."

The Nashville, Chattanooga & St. Louis Railway, and other railroad companies doing business in Tennessee, then filed their petition, dated December 23, 1920, before the Interstate Commerce Commission, averring that said order of the Railroad and Public Utilities Commission of Tennessee, and especially those parts thereof hereinabove quoted, created an undue burden upon interstate commerce, by unduly and unjustly preferring shippers and localities in Tennessee against shippers and localities in other states, and further, by denying to the Petitioners before the Interstate Commerce Commission many thousands of dollars of revenue which they were entitled to receive and collect, under the Transportation Act of Congress 1920. The prayer of said petition before the Interstate Commerce Commission was as follows:

"Wherefore, your petitioners pray on their own behalf and on behalf of all other railroads operating in the State of Tennessee that this Honorable Commission will institute at an early date an investigation with respect to the matters and things herein set forth; and after due notice has been given to the State of Tennessee and the authorities thereof, an order be entered declaring discriminatory prejudicial, unjust and unlawful, and as creating an undue burden upon interstate commerce, any rate, fare or charge required to be observed by order of The Railroad and Public Utilities Commission of the State of Tennessee, or other authority of said State, for an- in connection with the intrastate transportation of freight traffic within the State of Tennessee (and including particularly the rates on sewer pipe, earthen, clay or concrete, carloads; stone and gravel, carload—when for use in building public highways and consigned to Federal, State, County or Municipal authorities, or their bona fide agents; and on common brick), which is less than the rates, fares and charges that would result from percentage increases corresponding with the increases in rates, fares and charges applicable for like or similar service in interstate transportation that have heretofore been authorized and made effective for carriers in the Southern Group under and in pursuance of the decision of this Commission in Ex Parte 74; and that this Commission by its order will prohibit such advantage, preference and prejudice as between persons and localities in intrastate commerce, on the one hand, and interstate commerce on the other hand, and such unjust discrimination against interstate commerce and unlawful burden upon interstate commerce, and will prescribe the rates, fares and charges, or the maximum and minimum, or the maximum or minimum, thereafter to be charged, and the classifications regulations and practices thereafter to be observed, for an- in connection with the intrastate transportation of freight traffic within the State of Tennessee, in such manner as, in its judgment, will remove such advantage, preference, prejudice or discrimination aforesaid.

And petitioners pray for such other and further general relief in the premises as to this Commission may seem right and proper."

After investigation and upon consideration of briefs filed by petitioners in that proceeding and by the petitioners herein acting as protestants in said proceeding before the Interstate Commerce Commission, the said Commission announced its findings, as being that the intrastate rates on common brick and sewer pipe, in car loads, between points in Tennessee, were not shown to cause any undue or unreasonable advantage, preference or prejudice as between persons or localities in intrastate commerce, on the one hand, and in interstate or foreign commerce, on the other hand, or any undue, unreasonable or unjust discrimination against interstate or foreign commerce.

With regard to the intrastate rates on the transportation of stone and gravel, in car load shipments, the Interstate Commerce Commission declared its findings to be as follows:

"We further find that the increases made by respondents in their interstate rates for the transportation of stone and gravel, in car loads, under our decision relating to the southern group in Ex Parte 74, result in reasonable charges for the interstate transportation of those commodities between points in Tennessee and points in adjoining states and that the failure of said respondents within the state of Tennessee correspondingly to increase their intrastate rates and charges for the transportation of stone and gravel when used in the construction of public highways and consigned to federal, state, county, or municipal authorities or their bona fide agents, in force on the date of our decision in Ex Parte 74, has resulted in the past and will result in the future in lower rates on those commodities than the corresponding interstate rates between points in Tennessee and points in adjoining states and in undue prejudice to persons and localities in interstate commerce between points in Tennessee and points in adjoining states; in undue preference to persons and localities in Tennessee; and in unjust discrimination against interstate commerce.

6 We find *find* that said undue prejudice, preference, and discrimination can and should be removed by making increases in the intrastate rates for the transportation of stone and gravel, in car loads, when for use in the construction of public highway*ds* and consigned to federal, state, county, or municipal authorities or their bona fide agents, in force on the date of our decision in Ex Parte 74, which shall correspond with the increases heretofore made and now in effect as aforesaid in the interstate rates for the transportation of said commodities shipped in interstate commerce between points in Tennessee and points in adjoining states.

These findings are without prejudice to the right of the authorities of the State of Tennessee or of any other party in interest to apply in the proper manner for a modification of our findings and order as to any specific intrastate rate or rates for the transportation of the commodities named on the ground that the latter are not

related to the interstate rate or rates in such a way as to contraven
the provisions of the interstate commerce act.

Schedules giving effect to these findings may be made effective o
not less than five days' notice.

"An appropriate order will be entered."

Pursuant to said findings, on August 3, 1921, at a general sessio
of the Interstate Commerce Commission, held at its office in Was
ington, D. C., an order was entered, identified on the docket of sa
Commission as No. 12132, providing that all common carriers b
steam railroad operating in Tennessee, naming them, including th
Nashville, Chattanooga & St. Louis Railway, should cease and d
sist from practicing the undue prejudice, undue preference and a
vantage, and unjust discrimination, found to exist as stated in th
quotation hereinabove made from the findings of the said Commi
sion, in the relation of interstate rates for the transportation of sto
and gravel, in car loads, when for use in the construction of publ
highways and consigned to federal, state, county, or municipal a
thorities, or their bona fide agents. This order further provides th
all said railroad companies are required to "establish, put in for
and maintain" rates for the transportation of such commodities i
intrastate commerce within the State of Tennessee which shall e
ceed the rates for the transportation of said commodities in effe
July 29, 1920, in amounts corresponding to the increases heretofo
made and now in effect under the order of the Interstate Commer
Commission referred to as Ex Parte 74, in the rates for the transpo
tation of said commodities in interstate commerce within the Sta
of Tennessee and between points in the State of Tennessee and poin
in adjoining states.

The order further provides that it shall become effective o
7 or before October 13, 1921, upon notice to the Commissi
and to the general public by not less than five days' noti
filed and posted in the manner prescribed in Section 6 of the Inte
state Commerce Act, and "remain in force until the further order
the Commission in the premises."

A complete copy of the finding of the Interstate Commerce Co
mission in said proceeding and of the order made thereon by sa
Commission, will be filed in this cause before the hearing, as Exhib
"B" to this petition.

The several carriers and railroad companies operating in Te
nessee named in and affected by said order of the Interstate Co
merce Commission, have given the notice described in th- last pa
of said order, that the increased schedule of rates required by sa
order will be put into effect and maintained by them on and aft
September 23, 1921; and Petitioners aver that unless said order
the Interstate Commerce Commission, in whole or in part, is e
joined, set aside, vacated or annulled by the proper decree of th
court, said increased rates will be charged by said railroads an- t
Petitioners, and the United States Government, and other shippe
will be required to pay the increased rates on shipments of sto
and gravel, in carload lots, purchased and owned by Petitioner, t

State of Tennessee, and its governmental subdivisions, and by the Government of the United States, for use in the construction and maintenance of the public highways in Tennessee.

IV.

Petitioners charge and aver that in making and requiring the enforcement of said order, the Interstate Commerce Commission exceed the authority and power vested in said Commission by Congress, and that to the extent the said Commission exceeded its said authority and power, its order is null and void and should be so adjudged and decreed by this Court; and this averment is made by the Petitioners especially in so far as said order of the Interstate Commerce Commission affects and is applied to shipments of stone and gravel in car load lots which are the property of the State of Tennessee, or the several counties and municipalities thereof, and of the United States Government, whether said stone and gravel
8 be the property of the state or one of its subdivisions alone, or the property of the State of Tennessee and the Government of the United States jointly, purchased and acquired in the construction and maintenance of the several highways which are being constructed and which will be constructed by the State of Tennessee and the Government of the United States jointly.

Petitioners aver that the Interstate Commerce Commission has no power or authority to order and direct any increase of the rates on purely intrastate shipments and transportation of any commodity, except under and pursuant to the power vested in said Commission by Congress to remove unjust discrimination and undue and unreasonable preference or advantage in interstate commerce, prohibited by Sections 2 and 3 of the Act of Congress, known as the Interstate Commerce Act; and Petitioners aver that Congress, by the provisions of Section 22 of the Interstate Commerce Act, has exempted from the provisions of said Sections 2 and 3 of said Act the carriage, storage or handling of property of the United States, state or municipal governments, the power and control of the Interstate Commerce Commission over such shipments being limited to the prevention of unreasonably high rates for transportation in interstate commerce of the property of such governments.

Said Section 22 of the Interstate Commerce Act, provides as follows:

"That nothing in this Act shall prevent the carriage, storage or handling of property free or at reduced rates—for the United States, state or municipal governments."

This section of the Interstate Commerce Act has been declared by the Supreme Court of the United States to "settle beyond all doubt that the discrimination in favor of certain persons therein named, should not be deemed unjust." It is also true, as Petitioners aver, that any preference or advantage which may result to shippers or localities from the application of said Section 22 to interstate com-

merce, is not "unjust or unreasonable" preference or advantage, and is not therefore unlawful.

In construing and administering the provisions of Section 22 of the Interstate Commerce Act, in connection with the other provisions of the Act, the Interstate Commerce Commission, in its "Con-
9 ference Rulings," issued in "Bulletin No. 7," on November 1, 1917, by order of the Commission, provided as follows:

"33. Reduced Rate Transpor-ation for Federal, State and Municipal Governments.* Under Section 22 of the Act to regulate commerce, carriers may grant reduced rates for the transportation of property for the United States or for state or municipal governments, under arrangements made directly with such government, and in which no contractor or other third person intervenes, without filing or posting the schedule of such rates with the Commission. (See rulings 36, 308*e*, 218, 244, 311 and 452.)"

"36. Rates on Shipments for the Federal Government. If title to property such as postal cards, passes to the government at the point of manufacture, the carrier may agree upon a rate to be applied for transporting it for the government to another point, without filing a tariff with the Commission. But if the manufacturer under his contract is required to deliver to the government at such other point, the transportation must be under the published tariff rate. In other words, if the shipment is made directly by the government, this rate may be fixed by the carrier without posting and filing the tariff, but not otherwise. (See ruling 33, and ruling 244 rescinding ruling 65; also see ruling 452; also United States v. A. & V. Ry. Co., 40 I. C. C., 406.)"

"208 (*e*). Section 22 of the act authorizes carriers to grant free or reduced rate transportation of property for the United States, state, or municipal governments, or for charitable purposes *of* for exhibition at fairs or expositions. It also authorizes free or reduced fare transportation of certain specified persons. These special provisions and the words 'reduced rates' are construed to be special authority for carriers to depart from established tariff rates or fares; and for such transportation as is provided for in said section 22 it is not necessary for carriers to provide tariffs or observe tariff rates or fares and regulations excepting in the issuance, sale, and use of mileage, excursion, or commutation passenger tickets, and joint interchangeable mileage tickets. As to these, the provisions of section 6 with regard to publishing, filing, posting and observing tariffs must be complied with."

Petitioners aver that the effect of th-se Conference Rulings by the Interstate Commerce Commission is to expressly authorize discrimination and preferenc- in interstate commerce in the transportation of the property of the United States, or state or municipal governments, under the authority of Section 22 of the Interstate Commerce Act, in that the several carriers in interstate commerce are authorized thereby to enter into secret and private contracts and arrangements with the

governmental and municipal shippers for the transportation of governmental and municipal property with no notice to the Interstate Commerce Commission of such private and secret arrangements and terms; and in that the several carriers are further authorized, in making such private and secret arrangements with governmental and municipal shippers, to depart from established and published tariff rates on file with the Interstate Commerce Commission, in
10 instances where the carriers affected do not elect to accept the invitation and permission of the Interstate Commerce Commission to withhold their tariffs and rates on such transportation from the files and knowledge of the Interstate Commerce Commission.

Petitioners aver that said Conference Rulings are manifestly authorized by said Section 22 of the Interstate Commerce Act, and are wholly inconsistent with any power and authority in the Interstate Commerce Commission to prevent discrimination and preference or advantage between Governmental shippers, or between localities from and to which shipments of governmental property are made.

Petitioners aver that the effect of said Conference Rulings is to deprive the Interstate Commerce Commission of all means of determining the existence of preference and discrimination in such shipments.

Petitioners further aver that in authorizing the carriage of governmental property free, or at reduced rates, in said Section 22 of the Interstate Commerce Act Congress expressly authorized carriers to make preferences in such shipments, and declared that such preference is not unlawful preference or unlawful discrimination as defined in Sections 2 and 3 of the Interstate Commerce Act.

Petitioners aver that the property of a municipal or state government cannot be carried by a railroad company free, or at reduced rates, without granting to such municipality, or to the locality from which the shipment is made, a preference and advantage which, if done with respect to any other kind of shipment, would be an unjust and unreasonable preference within the prohibition of Sections 2 and 3 of the Interstate Commerce Act; Petitioners aver that by said Section 22, Congress intended to exempt such preference and advantage in transportation of governmental property from the prohibition contained in Sections 2 and 3 of said Act.

Petitioners further aver that in making its said order, requiring railroad companies in Tennessee to "establish and maintain" rates on intrastate shipments of stone and gravel at the increased level, the Interstate Commerce Commission has placed intrastate shippers at an unjust and unreasonable disadvantage which Congress did not contemplate or authorize, in that while requiring the
11 maintenance of this intrastate rates in question, at the level fixed by the Interstate Commerce Commission, done for the purpose of making said intrastate rates properly proportionate to interstate rates, the Interstate Commerce Commission is powerless to require the maintenance of the interstate rates on such shipments, and has, by its Conference Rulings referred to, made it im-

possible for it, or any other governmental agent, to ascertain or determine whether the said interstate rates are being maintained on shipments of governmental property, or whether reduced rates are granted to governmental shippers in interstate commerce, to the prejudice and injury of governmental shippers in Tennessee.

Petitioners further aver that the order of the Interstate Commerce Commission under such circumstances and conditions, constitutes an unwarranted and unauthorized interference with the reserved powers of the State of Tennessee, acting through its Railroad and Public Utilities Commission, in the control of purely intrastate transportation by common carriers, since it prevents the said Railroad and Public Utilities Commission of Tennessee from making a rate for the transportation of governmental property in Tennessee which it finds to be a reasonable rate for such transportation, simply because the same carriers, and other carriers, have filed with the Interstate Commerce Commission a schedule or schedules of rates on interstate shipments of governmental property from adjoining states to points in Tennessee, which are proportionately higher than the intrastate rates found by the Tennessee Railroad and Public Utilities Commission to be reasonable, when the interstate carriers are not required by the Act of Congress, nor by the rulings of the Interstate Commerce Commission to adhere to or maintain the published schedules of rates, but are authorized both by the Act of Congress and by the rulings of the Interstate Commerce Commission to enter into secret and private agreements for the transportation of such property in interstate commerce without notice to the Interstate Commerce Commission or any other governmental agency.

Petitioners aver that the true and proper construction of Section 22 of the Interstate Commerce act is that preference and discrimination in the transportation of governmental property in interstate commerce is not unjust discrimination and not undue or
12 unreasonable preference, and such discrimination and preference are therefore not unlawful. Petitioners aver that under this construction of Section 22 of the Interstate Commerce Act, the Interstate Commerce Commission is not authorized or empowered to order and require carriers to cease and desist from practicing prejudice, preference and discrimination in the transportation of governmental property in interstate commerce, and is therefore not empowered and authorized to require intrastate carriers to increase their rates on intrastate shipments of governmental property on the ground that such rates constitute an undue preference in favor of intrastate shippers and an unjust discrimination against shippers in adjoining states.

V.

Premises considered, Petitioners pray the judgment and decree of this Court that the said order of the Interstate Commerce Commission No. 12132, in so far as it requires steam railroads in Tennessee to establish, put in force and maintain any increase in their

ıtes for the transportaion of stone and gravel, in carloads, when
ɔr use in the construction of public highwayds and consigned to
ederal, state, county or municipal authorities, or their bona fide
gents, shich will exceed the rates of said railroads for the transpor-
ation of said commodities in effect July 29, 1920, when said com-
ıodities are carried and transported for the United States, State, or
ıunicipal governments, be declared to be null and void as in excess
f the power and authority conferred upon the Interstate Commerce
ommission by Congress, and that said order, to said extent, be en-
ɔined, set aside, annulled and suspended; and that said order be
eclared by final decree to be valid and binding upon no one from
ıe date of its promulgation and publication by the Interstate Com-
ıerce Commission.

And Petitioners pray that they be granted such other and further
elief which may be just and equitable and to which they may be
entitled in the premises.

3 This is the first application for writ of injunction on said order.

And Petitioners pray that service of this petition on the United
tates be made by filing a copy hereof in the office of the Secretary
f the Interstate Commerce Commission and in the Department of
ustice. The oath to any answer filed to this petition is waived.

And Petitioners further pray that upon the filing of answer
ereto by the United States, or upon the failure to file such answer,
t the expiration of thirty days from the filing of said copies, an
rder be entered expediting the case and assigning it for hearing
t the earliest practicable date, in the manner required by the Act
f Congress under which this suit is filed.

FRANK M. THOMPSON,
Attorney General & Report- of Tennessee.
WM H. SWIGGART, JR.,
Assistant Attorney General & Reporter of Tennessee.

TATE OF TENNESSEE,
County of Davidson:

Personally appeared before me, a Notary Public in and for David-
ɔn County, Tennessee, authorized by law to take affidavits A. A.
'aylor, who made oath in due form that he is the Governor of the
tate of Tennessee, vested by the Constitution of Tennessee with
he supreme executive power of the State; that he is familiar with
he matters and things set forth in the -oregoing bill of complaint
nd that the averments contained therein so far as they are positive
verments of fact are true, and in so far as they sonsist of averments
ıade upon information and belief, he verily believes them to be
rue; and that in so far as said averments consist of statements
nd conclusions of law, he verily believes them to be true.

A. A. TAYLOR.

Sworn to and subscribed before me this 20 day of September 1921.

[SEAL.] LENA H. BROWN,
Notary Public.

14 EXHIBIT A.

Office of the Railroad and Public Utilities Commission.

Nashville, November 19, 1920.

Investigation and Suspension Docket, No. 43.

In re advanced rates and charges on car load shipments of road building material (when consigned to and for Federal, State county or municipal authorities or their bona fide agents), sand gravel, brick, sewer pipe, fertilizer, and fertilizer material between stations in Tennessee when moving over the rails of the following carriers: Carolina, Clinchfield & Ohio Ry. Southern Ry. System, Nashville, Chattanooga & St. Louis Ry., Louisville & Nashville Railroad, Mobile & Ohio Railroad, Illinois Central Railroad, Chicago, Memphis & Gulf Railroad, East Tennessee & Western North Carolina Railroad, Harriman & Northeastern Railroad Tennessee & North Carolina Railroad.

Appearances:

Louisville & Nashville R. R. and Nashville, Chattanooga & St Louis Ry.—W. A. Northcutt.
Southern Railway—H. L. Walker, E. H. Shaw and F. H. Behring.
Mobile and Ohio Ry.—Walter Shipley.
Illinois Central Railroad—J. L. Shepard.
Carolina, Clinchfield & Ohio Railroad—C. A. Smith.
Nashville Traffic Bureau—T. M. Henderson.
Knoxville Traffic Bureau—C. R. Moffett.
Chattanooga Sewer Pipe Works—B. R. Shepard.
West Tennessee Gravel Co.—F. J. Fuller.
Franklin Limestone Co.—S. C. Balshe and W. G. Bush.
Herbert Stone Fertilizer Co.—T. L. Herbert.

By order entered September 18, 1920, this Commission upon complaint and upon its own motion suspended tariffs of the lines herein before mentioned, publishing intrastate rates between stations on respondents' lines in Tennessee, and a hearing concerning the unreasonableness of the rates under suspension was ordered and a full and complete hearing was had in the office of the Commission on November 11th and 12th, 1920, at which time testimony was taken and exhibits filed. No statistical evidence was offered showing the necessity for the advanced rates under suspension, except that an

estimate was made showing the approximate loss sustained
15 by reason of the suspension. No evidence was offered tending to show that the service performed, or that the cost of such service was any different as between the several different carriers, or as between the several different states through which they operated.

The proof shows that the Southern Railway prior to the period of Federal control of railroads, was voluntarily operating over its lines in Tennessee, a scale of rates on common brick, which scale was advanced by the Director General in his Order No. 28 to the extent of one dollar per one thousand brick, and that the Southern Railway, is now seeking to further advance this mileage scale 25 per cent, and has published and filed with the Commission rates upon this basis, which rates apply on common brick, car load minimum ten thousand brick, and are as follows:

Distance.	Rate per 1,000 brick.
50 miles and under	$2.50
100 " " over 50	2.82
150 " " " 100	3.13
200 " " " 150	3.75
250 " " " 200	4.38

The testimony offered did not show that these rates were unreasonable or unjustly discriminatory.

The suspended rates on sewer pipe, car load, were shown to be unreasonable and unjustly discriminatory when compared with rates being operated by carriers in other States; and they were also shown to be unreasonable and unjustly discriminatory when compared with voluntary interstate rates as operated by carriers out of Chattanooga, Tennessee.

The suspended rates on other commodities as named in the order were shown to be higher than the rates being operated by most of the said carriers on intrastate traffic in other States and it was admitted by defendants that interstate rates on stone in Tennessee were unduly preferential and were discriminatory when compared with the advanced rates on intrastate shipments.

The Commission had judicial knowledge which leads it to believe that the same might also be said as to the intrastate rates on gravel, car load.

16 We are of the opinion and find that the suspended rates on common brick, car load, as published by the Southern Railway in its mileage scale as hereinbefore set out, should be allowed to become effective, and that other rates on common brick, carload between points in Tennessee may be allowed to become effective provided that no advanced rate, or rates, shall exceed the mileage scale of rates of the Southern Railway as hereinbfore set out, and

We are further of the opinion and find that the suspended rate on sewer pipe (earthen, clay or concrete), carload, should be canceled, and

We are further of the opinion and find that the suspension on th other commodities named should be vacated and set aside excep that the suspended rates on stone and gravel, carload, when used i the construction of public highways and consigned to Federal, State County or Municipal authorities, or their bona fide agents, shoul not be allowed to become effective.

An appropriate order will be issued.

Order.

The Commission having on date hereof, made and filed a repor containing its findings of fact and conclusions thereon, which repor is hereby referred to and made a part hereof,

It is ordered, That the carriers respondents herein be, and the are hereby notified and required to cease and desist from and afte date hereof, and thereafter to abstain from publishing, demandin or collecting any higher rates for the transportation of intrastat freight between points in Tennessee than in the succeeding para graphs hereof, and

It is further ordered, That the Southern Railway may charge fo and collect on intrastate shipments of common brick, car load, mini mum 10,000 brick, the mileage scale as hereinbefore set out, an that no change be made in the application of said mileage scale other intrastate rates on common brick, car load, as published b respondent carriers and in effect immediately prior to thi original suspension, may be advanced 25 per cent, provide
17 that no advanced rate shall exceed the mileage scale of th Southern Railway as hereinbefore set out. In assimilatin the different rates and mileage scales an estimated weight of pounds per brick shall be used, and

It is further ordered, That respondents hereto shall make no ad vances in their rates on intrastate shipments of sewer pipe (earthen clay or concrete), car load, over and above the rates on said com modities as in effect immediately prior to the date of this origina suspension, and

It is further ordered, That on car load shipments of stone an gravel moving intrastate between points in Tennessee, when for us in building public highways and consigned to Federal, State, County or Municipal authorities, or their bona fide agents, that carriers re spondent hereto shall make no advance in the rates and charges ove and above those in effect immediately prior to the effective date o the original suspension on these commodities, and

It is further ordered, That this order shall continue in effect fo a period of not less than two years from date when it shall take effect unless otherwise ordered by this Commission.

B. A. ENLOE,
Chairman.
HARVEY H. HANNAH,
Commissioner.
GEORGE N. WELCH,
Commissioner.

STATE OF TENNESSEE,
County of Davidson:

I, J. H. Corbitt, Secretary of the Tennessee Railroad and Public Utilities Commission, do hereby certify that the above and foregoing is a true and exact copy of the order of the Tennessee Railroad and Public Utilities Commission dated November 19, 1920.

Witness my hand at Nashville, this the 14th day of September, 1921.

J. H. WEST,
Secretary.

18 EXHIBIT "B."

7078.

Interstate Commerce Commission.

No. 12132.

Tennessee Rates and Charges.

In the Matter of Intrastate Rates and Charges in the State of Tennessee.

19 No. 12132.

Tennessee Rates and Charges.

In the Matter of Intrastate Rates and Charges in the State of Tennessee.

Submitted June 4, 1921. Decided August 3, 1921.

Respondents' intrastate rates in Tennessee, on stone and gravel, in carloads, for use in the construction of public highways and consigned to federal, state, county, or municipal authorities or their bona fide agents, maintained by state authority, found to result in undue prejudice to shippers of interstate traffic, in undue preference of shippers of intrastate traffic, and in unjust discrimination against interstate commerce. Rates prescribed which will remove such prejudice, preference, and discrimination. Intrastate rates on common brick and sewer pipe, in carloads, not found unduly preferential or prejudicial.

Henry Thurtell and Nelson W. Proctor for respondents.

J. O. Hendley for the Railroad and Public Utilities Commission of the state of Tennessee.

B. R. Shepherd for Chattanooga Sewer Pipe Works; C. R. Moffett for Traffic Bureau of Knoxville and Sherman Concrete Pipe Company; T. M. Henderson for Traffic Bureau of Nashville, T. L. Her-

bert & Son, W. G. Bush & Company, and Fulcher Brick Company; F. J. Fuller and J. E. Rodes for Franklin Limestone Company; Robert S. Henry for Tennessee Automotive Trades Association and Tennessee Automobile Association.

Report of the Commission.

BY THE COMMISSION:

This proceeding was instituted upon petition of certain steam railroads operating in Tennessee to determine whether the intrastate carload rates required by the Railroad and Public Utilities Commission of that state on sewer pipe (earthen, clay, or concrete); on common brick; and on stone and gravel, when for use in the construction of public highways and consigned to federal, state, county, or municipal authorities or their bona fide agents, are unlawful in their relation to petitioners' interstate rates on the same commodities. By our order of investigation all steam railroads in Tennessee subject to our jurisdiction were made respondents.

20 In Increased Rates, 1920, 58 I. C. C., 220, hereinafter referred to as Ex Parte 74, we authorized an increase of 25 per cent in freight rates on interstate traffic in the southern group, which includes Tennessee. Rates thus increased became effective August 26, 1920. Tariffs publishing similarly increased intrastate rates in Tennessee, as well as increased intrastate passenger fares and other charges corresponding to those authorized interstate in Ex Parte 74, were allowed to go into effect shortly afterward by the Tennessee commission, except that the proposed increased rates on "road building material (when consigned to federal, state, county, or municipal authorities or their bona fide agents), sand, gravel, brick, sewer pipe, fertilizer and fertilizer material," were suspended. The Tennessee Central, the Birmingham & Northwestern, and the Gulf, Mobile & Northern, however, were granted an increase of 25 per cent without exception because of urgent financial needs, and their rates will, therefore, not be considered herein.

On November 19, 1920, the Tennessee commission vacated its suspension order but prohibited any increases in rates on sewer pipe (earthen, clay, or concrete), and on stone and gravel, when for use in the construction of public highways and consigned to federal, state, county, or municipal authorities or their bona fide agents. An increase in the rates on common brick, hereinafter called brick, was permitted, subject to limitations which are set forth infra.

Rates on brick and sewer pipe will be stated in cents per 100 pounds, except as otherwise indicated, and those on stone and gravel in amounts per net ton.

Brick.

Rates on brick in Tennessee are generally published in the form of distance scales, although there are numerous specific rates, notably between points on the Louisville & Nashville. The Southern has a

distance scale on its Knoxville division which is lower than the intrastate scales on most other lines and, including the increases following Ex Parte 74, is as follows:

Distance.	Rate per 1,000 brick.	Rate per 100 pounds.
		Cents.
50 miles and under	$2.50	5
100 miles and over 50 miles	2.82	5 5
150 miles and over 100 miles	3.13	6 5
200 miles and over 150 miles	3.75	7 5
250 miles and over 200 miles	4.38	9

The Tennessee commission authorized publication of the foregoing rates by the Southern and also permitted the other respondents
21 to increase their rates to the same level but not to exceed 25 per cent. The effect of this was to prevent increases in the rates of the other carriers, except for short distances and distances greater than 250 miles.

Brick is produced at about 40 points in Tennessee, distributed throughout the state. The principal shipping points, according to respondents' evidence, are Nashville, Chattanooga, Scottsville, Kingsport, and Robbins. The weighted-average intrastate haul is about 60 miles and the maximum about 250 miles. About 60 per cent of the shipments are hauled less than 50 miles, and 90 per cent less than 160 miles. Respondents submitted an exhibit, based on actual single-line intrastate hauls during the year ended September 30, 1920, to show the general level of the Tennessee rates. The following statement, drawn therefrom, gives the weighted-average rates charged for various distances; the present rates, which include the increases authorized by the Tennessee commission; and the proposed rates, which represent a uniform increase of 25 per cent over the former rates. The present scale of the Nashville, Chattanooga & St. Louis, which is higher than that of the other principal Tennessee lines, is also shown as it would be if increased 25 per cent.

Distances.	Average rates charged.	Average present rates.	Average proposed rates.	N. C. & St. L. present scale increased 25 per cent.
	Cents.	Cents.	Cents.	Cents.
5 miles and less.....	....	.....	.....	6.5
10 miles and over 5....	2.67	3.62	3.65	7
15 miles and over 10...	4.68	5.06	5.92	7
20 miles and over 15...	4.87	5.09	6	7
25 miles and over 20...	6.12	6.12	7.89	7.5
30 miles and over 25...	4.03	4.87	5.06	7.5
35 miles and over 30...	6.03	6.16	7.3	7.5
40 miles and over 35...	4.03	5.1	5.39	7.5
45 miles and over 40...	5.2	5.78	6.43	7.5
50 miles and over 45...	5.47	5.47	6.97	8
55 miles and over 50...	6.32	6.41	7.82	8
60 miles and over 55...	5.61	6.42	6.92	8
65 miles and over 60...	5.1	6.1	7.82	8
70 miles and over 65...	5.3	6.08	6.81	8
75 miles and over 70...	6.55	6.55	8.13	9
80 miles and over 75...	6.16	6.34	7.87	9
85 miles and over 80...	6.36	7.53	8.04	9
90 miles and over 85...	7	7	9	9
95 miles and over 90...	7.37	8.13	9	9
100 miles and over 95..	7	7	9	9.5
110 miles and over 100.	6.64	6.89	8.34	9.5
120 miles and over 110.	5.73	6.16	7.25	9.5
130 miles and over 120.	6.19	6.28	7.75	10
140 miles and over 130.	7.95	9.39	10	10
150 miles and over 140.	7.82	8.3	9.76	10.5
160 miles and over 150.	8.74	9.13	10.81	10.5
170 miles and over 160.	8.5	11.95	12.23	10.5
190 miles and over 170.	....	.....	.....	11.5
200 miles and over 190.	9	9	11.5	11.5
210 miles and over 200.	9	9	11.5	12
220 miles and over 210.	....	.....	.....	12
230 miles and over 220.	9	9	11.5	12.5
240 miles and over 230.	9	9	11.5	12.5
250 miles and over 240.	6	7.5	7.5	13

22 The volume of movement over certain lines was estimated and in other respects the exhibit from which these figures were taken does not afford a wholly acceptable test of the measure of the particular rates which respondents seek to increase. Apparently the exhibit includes all shipments of brick, although rates on common brick only are involved; and it includes a large tonnage that moved under rates upon which an increase of 25 per cent was allowed by the Tennessee commission. The effect, if shipments under such rates were excluded, is illustrated by the following example: For dis-

nces under 10 miles the exhibit shows a total movement of 37,-10,740 pounds, average rate charged, 2.67 cents, average present ate, 3.62 cents, and average proposed rate, 3.65 cents. The Tennes-e commission, however, authorized an increase of 25 per cent in he rates applicable on all this tonnage except 285,140 pounds that noved over the lines of the Nashville, Chattanooga & St. Louis and he Mobile & Ohio. The present and proposed rates on the ship-ents that moved over these lines average 5.14 and 6.67 cents, re-pectively. By the same process of elimination the rates for many ther distance groups would be substantially affected. In a few in-ances it would result in lower average rates, but in general it would sult in higher.

Respondents compare the Tennessee rates with rates on brick in ther territories as exhibited by complainants in National Paving rick Mfg. Asso. v. A. & V. R. R. Co., No. 10733, now pending, hich involves rates on brick of all kinds throughout the country st of the Rocky Mountains. According to these comparisons, rates Tennessee, if increased uniformly 25 per cent over those in force ugust 26, 1920, would average lower than the rates in central and stern trunk line territories, where the traffic density is much reater than in Tennessee. Respondents also show that the Tennes-e rates, if thus increased, would average lower than those under he current Shreveport scale. They cite numerous interstate scales nd specific rates on brick in southern territory with which these verage Tennessee rates would not be out of line. On the other and, the Tennessee commission submits a number of comparative atements showing rates applying interstate in the south which are latively lower than the intrastate rates sought by respondents. It so calls attention to scales applying intrastate in Georgia, Flordia, nd Alabama which, including the increases following Ex Parte 74, e lower than the Tennessee rates.

The intrastate rates of the various lines in Tennessee differ widely nd respondents' exhibits are largely based upon comparisons of verage rates. There is no complete or satisfactory showing of the lationship between the state and interstate rates of individual roads.

Nor is there evidence regarding the rates or traffic of many of the smaller lines, except a mere statement of their intra-state distance scales. In the following table the present rates Tennessee, which respondents seek to increase, as typified by a eighted average of the rates applicable on shipments that moved uring the year ended September 30, 1920, and by an average of he scale rates of the different lines, are compared with specific inter-ate rates for corresponding distances between points in Tennessee nd points in other states, shown in exhibits, and with the rates rescribed for the Southern and the Alabama Great Southern in leridian Traffic Bureau v. S. Ry. Co., 60 I. C. C., 5.

Distances.	Weighted average intrastate rates.		Average intrastate scale rates.		Specific interstate rates.	Meridian scale.
	Present.	Proposed.	Present.	Proposed.		
	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.
5 miles and less			5	5.8	.....	4.5
10 miles and over 5	5.14	6.67	5.1	6	.....	4.5
15 miles and over 10	5.32	6.46	5.3	6.5	5.5	5
20 miles and over 15	5.12	6	5.5	6.7	5.5	5
25 mles and over 20	6.12	7.89	5.7	7.2	6.5	5
30 miles and over 25	5.31	6.93	6	7.5	5.0–6.5	5.5
35 miles and over 30	5.73	7.24	6	7.7	6.5–7.5	5.5
40 miles and over 35	5.48	6.9	6	7.5	.....	5.5
45 miles and over 40	5.1	6	6	7.5	6.5	6.5
50 miles and over 45	5.47	6.97	6	7.6	7.5	6.5
55 miles and over 50	6.34	7.84	6.4	8	5.5–5.6–8.0	6.5
60 miles and over 55	6.3	7.81	6.4	8	5.5–6.5	6.5
65 miles and over 60	6.1	7.82	6	7.5	5.5–7.0–8.0	7
70 miles and over 65	6.32	7.82	6	7.5	7.5	7
75 miles and over 70	6.55	8.13	6.2	7.8	7.0–8.0	7
80 miles and over 75	6.25	7.83	6.3	7.9	7.5	7
85 miles and over 80	6.78	8.66	6.3	8.1	7.5	7.5
90 miles and over 85	7	9	6.5	8.1	6.5–7.0–7.5–9.0	7.5
95 miles and over 90	7	9	6.5	8.1	8.0–9.0	7.5
100 miles and over 95	7	9	6.6	8.3	6.5	7.5

110 miles and over 100.....	7.08	8.24	6.8	8.9	7.0–8.0–9.5	8
120 miles and over 110.....	6.59	7.64	7	8.9	7.0–8.0–9.5	8
130 miles and over 120.....	6.98	7.82	7.3	9.3	8.0–9.5	8
140 miles and over 130.....	8	10	7.5	9.5	8.0–9.0–10	8
150 miles and over 140.....	8	10	8	10	9	9
160 miles and over 150.....	8.5	10.5	8	10	9.0–9.5–10.5–13.5	9
170 miles and over 160.....	8.5	10.5	8	10	7.5–8.5–9.5	9
180 miles and over 170.....			8.5	10.7	9.5–10	9
190 miles and over 180.....			8.5	10.7	7.5–9.5–10.5–11.5	9.5
200 miles and over 190.....	9	11.5	8.8	11	7.5–10	9.5
210 miles and over 200.....	9	11.5	9	11.2	10–12	.....
220 miles and over 210.....			9.5	12	10	.....
230 miles and over 220.....	9	11.5	10	12.5	10.5–12.5	.....
240 miles and over 230.....	9	11.5	10	12.5	12.5–16.5	.....
250 miles and over 240.....			10.5	13	10.5–12.5	.....

The average intrastate rates shown above were ascertained by excluding from respondents' exhibits rates subject to the full increase of 25 per cent under the order of the Tennessee commission and by making appropriate allowance for authorized lesser increases in other rates. The proposed intrastate rates average higher than most of the interstate rates cited in comparison or the rates prescribed in the Meridian Case.

The record affords many illustrations of changes in former relationships between interstate and intrastate rates which respondents allege result in unjust discrimination against interstate commerce.

To points south of Nashville on the Nashville, Chattanooga,
24 & St. Louis the route from Chattanooga is interstate through Georgia and Alabama. The rates from Chattanooga to those points have been increased 25 per cent, while the intrastate rates from Nashville have not been increased, resulting in the changed relationships shown in the following table:

To—	Distances from—		Rate from Chattanooga.		Rate from Nashville.	
	Chattanooga.	Nashville.	Prior to ex parte 74.	Present.	Prior to ex parte 74.	Present.
	Miles.	Miles.	Cents.	Cents.	Cents.	Cents.
Sherwood, Tenn. . .	55	96	6.5	8	7	7
Decherd, Tenn.	70	82	6.5	8	7	7
Winchester, Tenn..	72	85	6.5	8	7	7
Estill Springs, Tenn.	75	77	7	9	7	7
Tullahoma, Tenn...	82	69	7	9	6.5	6.5
Manchester, Tenn..	94	81	7	9	7	7
Shelbyville, Tenn..	104	63	7.5	9.5	6.5	6.5
Fayetteville, Tenn..	108	121	7.5	9.5	7.5	7.5
McMinnville, Tenn.	116	103	7.5	9.5	7.5	7.5
Lewisburg, Tenn...	136	149	8	10	6.5	6.5

To Lexington, Tenn., the distances from Nashville and Paducah, Ky., via the Nashville, Chattanooga & St. Louis are 127 and 118 miles, respectively. Under Ex Parte 74 the rate from Paducah was increased from 7.5 to 9.5 cents, while the Nashville rate of 8 cents has not been increased. Similar examples are found in the rates of other lines. Adams, Tenn., on the Louisville & Nashville is 42 miles from Nashville and 31 miles from Hopkinsville, Ky., a brick-producing point. Prior to Ex Parte 74 the rate from both Hopkinsville and Nashville was 5 cents. The rate from Hopkinsville is now 6.5 cents. Etowah, Tenn., on the Louisville & Nashville, is 77 miles from Chattsworth, Ga., and 82 miles from Knoxville, both brick-producing points. On August 26, 1920, the rate from Chattsworth was increased from 5 cents to 6. 5 cents, but no increase has been made in the intrastate rate of 5.5 cents from Knoxville.

The refusal of the Tennessee commission to permit a full increase of 25 per cent in the intrastate rates has given an advantage to intra-

state routes that compete with interstate routes between certain points. For example, the shortest route from Nashville to Memphis and other destinations in western Tennessee is over the Nashville, Chattanooga & St. Louis, either directly or in connection with other lines. To many of the same points there is also an interstate route, only slightly longer, over the Louisville & Nashville via Guthrie, Ky. Formerly the rates over these routes were the same, but since the interstate rate has been increased, traffic has been diverted to the intrastate route.

These and similar illustrations offered by respondents fall short, however, of proving that the intrastate rates as a whole or those of individual lines unjustly discriminate against interstate commerce. Some of the intrastate rates appear too low in comparison with certain interstate rates cited by respondents, but many instances are given of rate relationships which suggest a contrary conclusion. According to respondents' exhibit the present rate of the Mobile & Ohio from Henderson, Tenn., to Pinson, Tenn., 5.8 miles, is 7 cents; an increase to 9 cents is sought. The same carrier maintains rates of 5.5 cents from Gilmore, Tenn., to Corinth, Miss., 62 miles, and 9.5 cents from Columbus, Miss., to Jackson, Tenn., 181 miles. A rate of 7 cents applies from Melville, Tenn., to Dayton, Tenn., 21 miles, over the Cincinnati, New Orleans & Texas Pacific, and from Chattanooga to Cleveland, Tenn., 29 miles over the Southern, which respondents seek to increase to 9 cents. The present rate is higher than any specific interstate rate cited for corresponding distances. The intrastate rates of the Illinois Central are generally as high as, or higher than, the rates from Paducah, Ky., to points on its line in Tennessee for corresponding distances. The proposed rates would be higher than those from Paducah in almost every instance.

Respondents cite a rate of 6 cents from Robbins, Tenn., to Chattanooga, 116 miles over the Cincinnati, New Orleans & Texas Pacific, as being unduly prejudicial in relation to the rate of 6.5 cents from Calhoun, Ga., to Chattanooga, 59 miles over the Nashville, Chattanooga & St. Louis. The rate from Robbins could be increased to 6.5 cents without exceeding the Tennessee scale. The maintenance of relatively unequal rates by different carriers from different originating points to a common destination does not constitute undue prejudice against shippers or communities. Stone Products Co. v. Director General, 61 I. C. C., 51. Furthermore, the 6.5-cent rate applies to Chattanooga from points in Alabama on the Nashville, Chattanooga & St. Louis and the Southern much farther distant than is Calhoun. The rate to Chattanooga from Florence, Ala., 167 miles, is 7.5 cents; from Tunnel Hill, Ga., 30 miles, 5 cents; and from Resaca, Ga., 53 miles, 5.6 cents.

The rates to Jackson, Tenn., from Martin, Nashville, and Puryear, Tenn., are also claimed to be unjustly discriminatory in relation to the interstate rates from Columbus, Miss., East St. Louis, Ill., St. Louis, Mo., and Paducah, Ky. A comparison of these rates follows:

From—	Distance.	Present rate.	Proposed rate.
	Miles.	Cents.	Cents.
Martin, Tenn	54	6	7.5
Puryear, Tenn	91	7	9
Nashville, Tenn	152	8.5	10.5
Paducah, Ky	106	7	....
Columbus, Miss	172	9.5	....
East St. Louis, Ill	253	16.5	....
St. Louis, Mo	258	16.5	....

26 The rates on brick maintained by the Louisville & Nashville from Nashville to stations in Tennessee on the main line of its Nashville & Decatur division are already on a higher basis than the rates from Coaldale and Sibleyville, Ala., important producing points, to the same destinations, as the following statement shows:

	From Coaldale.		From Nashville.		
To—	Distance.	Rate.	Distance.	Present rate.	Proposed rate.
	Miles.	Cents.	Miles.	Cents.	Cents.
Columbia	156	9	45	6	7.5
Glendale	150	9	51	6.5	8
Pleasant Grove	146	9	55	6.5	8
Campbells	143	9	58	6.5	8
Lynnville	138	9	63	6.5	8
Bufords	134	9	67	7	9
Reynolds	132	9	69	7	9
Riversburg	130	9	71	7	9
Wales	127	8	74	7	9
Pulaski	122	8	79	7	9
Aspen Hill	116	8	85	7	9
Lesters	113	8	88	7.5	9.5
Prospect	111	8	90	7.5	9.5

On brief respondents attempt to minimize the probability of a movement from Coaldale to the places listed above, but their own evidence indicates that there have been shipments to some of these points from Sibleyville, which is in the vicinity of Coaldale and takes the same rates.

The record does not show the exact extent to which the Tennessee carriers would profit by the further increase proposed in their intrastate rates on brick. From figures based on actual movements during the year ended September 30, 1920, over the Illinois Central; Louisville & Nashville; Cincinnati, New Orleans & Texas Pacific; and Nashville, Chattanooga & St. Louis, respondents estimate that such an increase would add about $12,800 a year to the revenues of those roads.

Respondents seek authority to increase the intrastate rates on common brick involved herein upon the ground that they cause undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand and interstate commerce on the other hand, or that they cause undue, unreasonable, or unjust discrimination against interstate commerce. While the evidence discloses certain situations which appear to result in undue preference or prejudice as between persons and localities engaged in intrastate commerce on the one hand and in interstate commerce on the other, the record affords no adequate basis for determining whether the situation should be corrected by changes in the intrastate rates or in the interstate rates or in both. The difficulty arises because of the lack of consistency as between the
27 various interstate rates and as between the various intrastate rates. The same difficulty is experienced in determining whether the intrastate rates of which complaint is made cause undue, unreasonable, or unjust discrimination against interstate commerce because of their unreasonably low level. So far as situations exist which are in need of correction, in our opinion they can best be handled by conference and cooperation between the Tennessee commission and respondents or by specific complaint to us by the persons or localities who believe they are subjected to undue prejudice.

Sewer Pipe.

Sewer pipe is manufactured at two points in Tennessee, Chattanooga and Knoxville. The plant at Chattanooga manufactures earthenware pipe. Similar pipe is manufactured at St. Louis, Mo., Louisville, Ky., Columbus, Macon, and Rome, Ga., Pomona, N. C., Roanoke, Va., and at various points in Alabama. The Chattanooga manufacturer controls the Georgia and Alabama plants, and has no substantial competition with earthenware pipe in Tennessee except in the western part of the state with pipe from St. Louis and Louisville. Knoxville manufactures concrete sewer pipe which competes with the earthenware product shipped from Chattanooga and interstate points.

The evidence for respondents shows quite fully the intrastate rates of the Southern, applying principally from Chattanooga and Knoxville to points in eastern Tennessee, but little evidence was offered in regard to other intrastate rates. The intrastate rates of the Southern if increased 25 per cent would be lower than the current Shreveport scale, but it appears that no sewer pipe is manufactured at Shreveport and that class rates apply on shipments from that point.

The following illustrations were given of alleged unduly prejudicial relationships between interstate and intra-state rates and routes:

Haul.	Route.	Distance.	Present intrastate rates.	Proposed intrastate rates.	Interstate rates.
From Chattanooga to—		Miles.	Cents.	Cents.	Cents.
Nashville	S. Ry.-T. C.	328	10	12.5	....
Do.	N. C. & St. L.	152	....	....	12.5
Clarksville	C. N. O. & T. P.-T. C.	597	17.5	22	....
Do.	N. C. & St. L.-L. & N.	237	....	....	22
Knoxville	S. Ry.	111	9	11.5	....
Do.	N. C. & St. L.-S. Ry.	148	....	....	11.5
Do.	N. C. & St. L.-L. & N.	239	....	....	11.5
From Knoxville to—					
Jellico	S. Ry.	65	9.5	12	....
Do.	L. & N.	81	....	....	12

28 The interstate and intrastate rates to these points were formerly the same. The present disparities, however, are not necessarily indicative of undue prejudice against shippers or communities. The interstate and intrastate routes are composed of wholly different carriers, except that from Chattanooga to Knoxville the Southern operates the intrastate route and also participates in one of the interstate routes. The interstate routes to Knoxville are materially longer and involve hauls over two lines. It was conceded at the hearing that the intrastate rate from Chattanooga to Nashville might properly be increased to 12.5 cents and that rate was made effective on June 30, 1921. It appears also that there is no opposition to the proposed increase in the intrastate rate from Chattanooga to Clarksville.

The following comparisons offered by respondents disclose apparent discriminations against interstate traffic:

Knoxville to—	Distance.	Present rate.	Proposed rate.
Jellico, Tenn.	65	9.5	12
Clairfield, Tenn.	79	10	12.5
Pruden, Tenn.	83	10.5	13
Fonde, Ky.	85	13	....
Cumberland Gap, Tenn.	66	8	10
Middlesboro, Ky.	69	10	....

Fonde and Middlesboro are the northern termini of branch lines of the Southern and appear to be the only interstate points served by these branches. Respondents' exhibits show that the proposed rates to the Tennessee points are relatively no higher than the interstate rates for corresponding distances from Chattanooga to certain points in Tennessee on the Nashville, Chattanooga & St. Louis, and from Rome, Campania, and Columbus, Ga., and Greensboro, N. C., to certain points in Alabama, Virginia, North Carolina, and South Caro-

lina. It appears, however, that the present rates are as high as the interstate rates maintained by the Southern between points on its Memphis division and by the Southern and the Nashville, Chattanooga & St. Louis from Chattanooga to points in Georgia and Alabama.

The following statement compiled from an exhibit submitted by respondents shows the intrastate rates from Chattanooga and Knoxville to points in eastern Tennessee as compared with those from Rome, Ga., Louisville, Ky., and Roanoke, Va., to the same destinations.

To—	From Knoxville.			From Chattanooga.			From Rome.		From Louisville.		From Roanoke.	
	Distance.	Present rate.	Proposed rate.	Distance.	Present rate.	Proposed rate.	Distance.	Present rate.	Distance.	Present rate.	Distance.	Present rate.
	Miles.	Cents.	Cents.	Miles.	Cents.	Cents.	Miles.	Cents.	Miles.	Cents.	Miles.	Cents.
Bristol	106	12	15	242	15	19	281	22	342	30	150	19
Johnson City	106	11.5	14.5	217	14.5	18	254	21.5	373	31.5	115	25
Greenville	74	10	12.5	185	14	17.5	224	20.5	341	31.5	207	25
Bulls Gap	55	9	11.5	166	13	16.5	205	24	322	31.5	226	25
Morristown	42	8	10	153	12.5	15.5	192	19	309	29	239	25
Jefferson City	29	7	9	140	12	15	179	22	282	29	252	25
Knoxville	...	....	....	111	9	11.5	150	14.5	267	25	281	25
Lenoir City	23	7	9	88	10.5	13	127	17.5	290	28	304	28
Sweetwater	41	8	10	70	9.5	12	109	15.5	308	28	322	28
Athens	55	9	11.5	56	9	11.5	95	14.5	322	28	336	28
Cleveland	82	10.5	13	29	7	9	68	12.5	345	28	363	28
Chattanooga	111	9	11.5	...	....	....	78	8	316	25	392	28

Exhibits submitted by the Chattanooga shipper show that the Tennessee rates increased 25 per cent would be higher generally than those prescribed in Meridian Traffic Bureau v. S. Ry. Co., supra, higher than the intrastate rates in Georgia, Alabama, and North Carolina, as increased following Ex Parte 74, and higher than many interstate rates maintained by respondents for corresponding distances between points in Tennessee and points in other states. These exhibits include comparisons of the present and proposed intrastate rates of various Tennessee lines for main-line, branch-line, and joint hauls, with through interstate rates for hauls of similar class and length. The following comparisons of the rates of the Southern from Chattanooga are taken from these exhibits:

Chattanooga to—	Distance.	Present rate.	Proposed rate.	Southern Ry. interstate scale.	Meridian scale.	Alabama scale.	Georgia scale.	North Carolina scale
	Miles.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.
Southern Ry. (main line).								
Athens, Tenn.	56	9	11.5	9	9	6.2	6.5	8
Sugar Valley, Ga.	55	9.5	....	....	....	....	....	....
Roddy, Tenn.	62	9	11.5	9.5	9.5	7	7	8
Oostanaula, Ga.	61	10	....	....	....	....	....	....
Lenoir City, Tenn.	88	10.5	13	10.5	10.5	8.2	8.8	9.5
Attalla, Ala.	87	11.5	....	....	....	....	....	....
Brice, Ga.	91	11.5	....	....	....	....	....	....
Sunbright, Tenn.	106	11.5	14.5	11.5	12	8.8	9.8	10
Knoxville, Tenn.	111	9	11.5	11.5	12	9.6	10	10.5
Braswell, Ga.	108	13	....	....	....	....	....	....
Mascott, Tenn.	125	12	15	12	12.5	10	10.3	10.5
Decatur, Ala.	122	11.5	....	....	....	....	....	....
Isham, Tenn.	137	12.5	15.5	12.5	12.5	10	10.8	11.5
Mableton, Ga.	138	13	....	....	....	....	....	....
Newport, Tenn.	175	13	16.5	14	14	12	12	12.5
Stockbridge, Ga.	172	14	....	....	....	....	....	....
Sheffield, Ala.	167	13	....	....	....	....	....	....
Florence, Ala.	172	13	....	....	....	....	....	....
Talladega, Ala.	166	11.5	....	....	....	....	....	....

Chattanooga to—	Distance.	Present rate.	Proposed rate.	Southern Ry. interstate scale.	Meridian scale.	Alabama scale.	Georgia scale.	North Carolina scale
	Miles.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.
Johnson City, Tenn.	217	14.5	18	15	....	13.2	13	14
Floville, Ga.	204	15.5	....	....	....	....	....	....
Corinth, Miss.	217	15	....	....	....	....	....	....
Bristol, Tenn.	242	15	19	16.5	....	13.8	13.5	14.5
Holton, Ga.	232	17	....	....	....	....	....	....
Selma, Ala.	241	14.5	....	....	....	....	....	....
Southern Ry. (branch).								
Scottville, Tenn.	119	15	19	11.5	12	10	10.3	10.5
Maryville, Tenn.	127	12	15	12	12.5	10	10.3	10.5
Rutledge, Tenn.	149	19.5	24.5	12.5	13	10.8	11	12
Church Hill, Tenn.	199	21.5	27	14.5	14.5	12.6	12.5	13
Gouge, Tenn.	253	22	27.5	17	....	13.8	13.8	15
Mountain City, Tenn.	277	25	31.5	17.5	....	14.6	14.3	15
Tallulah Falls branch.	235–288	16.5–20	....	....	....	....	....	....
Marion-Blacksburg branch.	297–343	19 –24	....	....	....	....	....	....
Greenville-Alston branch	337–401	20.5–22	....	....	....	....	....	....
Joint routes.								
Kingsport, Tenn. (S. Ry.-C. C. & O.)	243	21.5	27	16.5	....	16.4	16.2	16.5

Georgia points (N. C. & St. L.-S. Ry.-M. D. & S.)	230–258	17–20	....	....	....	....	....	....
North Carolina points (S. Ry.-C. & N. W.)	327–350	18–21.5	....	....	....	....	....	....
McFarland, Tenn. (S. Ry.-L. & N.)	92	16.5	20.5	10.5	11.5	9	10.1	10.5
Junta, Ga. (N. C. & St. L.-L. & N.)	91	10.5	....	....	....	....	....	....
Appalachia, Tenn. (S. Ry-L. & N.)	97	17.5	22	10.5	11.5	10.8	11.3	11.5
White, Ga. (N. C. & St. L.-L. & N.)	98	....	....	....	....	....	....	....
Copperhill, Tenn. (S. Ry.-L. & N.)	119	19	24	11.5	12	11.9	12.4	12.5
Oakman, Ga. (N. C. & St. L.-L. & N.)	119	13	....	....	....	....	....	....
Guntersville, Ala. (S. Ry.-N. C. & St. L.)	117	11.5	....	....	....	....	....	....

The proposed intrastate rates, except the rate to Knoxville, are higher in all instances than the comparative rates cited. Respondents assert that the interstate rates maintained by the Southern between points on its Memphis division are based on rates which were originally depressed by water competition. It appears, however, that these rates have been voluntarily maintained for many years and that the rates of the boat lines to competitive points on this division are materially higher than the all-rail rates. The present rate from Chattanooga to Knoxville yields 1.62 cents per ton-mile. The proposed rate would yield 2.07 cents. The earnings under the present rate are generally higher than under the rates from Chattanooga and Birmingham, Ala., to numerous points in Georgia, Alabama, and Tennessee, cited in an exhibit of the Chattanooga shipper, for distances ranging from 89 to 239 miles.

Considering the present Tennessee intrastate rates on sewer pipe as a whole, the record fails to show that they are relatively lower than the rates maintained by respondents from Chattanooga and Knoxville to interstate points for comparable hauls. Particular
31 situations are subject to the same comment which we have made in the case of the rates on common brick.

Stone and Gravel.

At the hearing counsel for the Tennessee commission objected to the introduction of evidence relating to intrastate rates on stone and gravel for use in the construction of public highways and consigned to federal, state, county, or municipal authorities or their bona fide agents, hereinafter referred to as municipal rates, on the ground that no order affecting such rates could be made by us because of the following provision of section 22 of the interstate commerce act: "Nothing in this Act shall prevent the carriage, storage, or handling of property free or at reduced rates for the United States, State, or municipal governments." Objection was also offered on the ground that the Tennessee commission has no means of ascertaining what interstate municipal rates on stone and gravel are charged by respondents, since such rates are not required to be filed with us. Respondents show that they follow the general policy of publishing in the regular manner such municipal rates as they maintain.

To adopt the construction of section 22 contended for by the Tennessee commission would make it mandatory on respondents to maintain the lower municipal rates on intrastate traffic. That section has been uniformly construed by us as being permissive in character. Metropolitan Paving Brick Co. v. Ann Arbor R. R. Co., 17 I. C. C., 198,204. We have also held, in effect, that in granting such reduced rates carriers must not violate sections 2 and 3 of the act. At page 408 of our report in Dairymen's Supply Co. v. P. R. R. Co., 28 I. C. C., 406, we said:

"But, while the act authorizes the free transportation of property for the purposes named, it does not require the carriers to grant such

transportation. It follows that the carriers may grant such transportation or deny it, as they deem best, provided their practices in that respect do not result in unjust discrimination under section 2 or undue preference or prejudice under section 3 of the act."

Furthermore, the Tennessee commission's order prescribing reduced municipal rates on stone and gravel exceeds the permission which may be exercised by carriers in their discretion. The application of the order is not limited to rates on stone and gravel for state, federal, county, or municipal governments. The order applies to shipments that are merely consigned to such governments or their bona fide agents. The record shows that an extensive program of road building has been undertaken in Tennessee, and that the usual practice is to let contracts at stated amounts per mile to the lowest bidders, who provide the necessary materials and labor.
32 Under such circumstances the transportation is for the contractors rather than for the government, but the order of the Tennessee commission implies that the municipal rates shall be charged on such shipments. The statement at page 204 of our report in Metropolitan Paving Brick Co. v. Ann Arbor R. R. Co., supra, is pertinent in this connection:

"What carriers may do is one thing and what they ought to be required to do is quite another thing. Certainly the Commission has no power under the law to order carriers to transport traffic for the United States, state, or municipal governments at reduced rates. Furthermore, it is a matter of common knowledge that the United States, state, and municipal authorities rarely lay pavements themselves. Work of this kind is usually let by contract. We know of no reason why lower rates should be made for contractors of brick paving than should be made in favor of any other party who may have contracts for other work for public authorities.

We have followed the same principle in various conference rulings.

Crushed or broken stone, used in the construction of roads, is produced at a number of points in Tennessee, principally at Mimms, Newsom, Franklin, Carter's Creek, and Whitehead, in the vicinity of Nashville, and at Chattanooga, Chickamauga, Strawberry Plains, Mascot, and Knoxville, in eastern Tennessee. Producers at these points are in competition with quarrymen in adjoining states, who are shown to have been prejudiced by the action of the Tennessee commission. From Hopkinsville, Ky., a stone-producing point, to Sadlers, Adams, Cedar Hill, Kinney, and Springfield, Tenn., from 28 to 43 miles distant, the rate prior to Ex Parte 74 was 80 cents, or 10 cents lower than the intrastate rate from Franklin to the same stations for distances ranging between 48 and 63 miles. The rate from Hopkinsville has been increased to $1, reversing the former relationship, which properly reflected the differences in distance. There is also a 90-cent rate from Franklin to Gallatin, South Tunnel, Fountain Head, Portland, and Mitchellville, Tenn., for distances

from 46 to 64 miles, which prior to August 26, 1920, was
higher than the rate from Bowling Green, Ky., a competin
to the same destinations for distances between 27 and 45 mil
Bowling Green rate is now 10 cents higher. These are loc
of the Louisville & Nashville.

To Tullahoma, Tenn., from Newsom, a distance of 86 miles
Nashville, Chattanooga & St. Louis, the rate is 90 cents. To t
point from Chattanooga via the interstate route of the same
distance of 82 miles, the rate is now $1.13, though prior to E
74 it was on a parity with that from Newsom. Cowan, Tenn
miles from Mimms and 64 miles from Chattanooga, the re
rates being 90 cents and $1. Prior to Ex Parte 74 Chattano
an advantage of 10 cents. These examples illustrate the di
tage to Chattanooga producers caused by the inability
33 Nashville, Chattanooga & St. Louis to increase its in
rates to stations on its line south of Nashville.

There is a large demand for stone for road building at M
Jackson, Dyersburg, and other places in western Tennessee
Tennessee stone is sold in competition with that shipped fr
nois, Kentucky, Arkansas, and Alabama. At the hearing o
of quarries at Newsom, Mimms, Franklin, and Whitehead p
against any increase in their rates which might prevent the
competing with interstate shippers. The evidence shows tha
crease of 25 per cent in the municipal rates in Tennessee wou
no such result. It would merely restore substantially the r
ships existing prior to Ex Parte 74, which in the main seem
been equitable. The following table shows rates to Memph
competing quarries:

To Memphis from—	Route.	Distance.	Rate prior to ex parte 74.	Present rate.	Proposed rate.
		Miles.	Cents.	Cents.	Cents.
Williford, Ark.	St. Louis-San Fran.	116	90	121.5	....
Rockwood, Ala.	Southern Ry.	173	90	112.5	....
Cedar Bluff, Ky.	Illinois Central	215	100	130	....
Newsom, Tenn.	Nashv., Chatt. & St. L.	222	100	100	125
Cerulean, Ky.	Illinois Central	227	100	130	....
Russellville, Ky.	Louisv. & Nashv.	233	160	110	....
Mimms, Tenn.	Nashv., Chatt. & St. L.	246	110	110	138
Franklin, Tenn.	Louisv. & Nashv.	280	170	120	....
Whitehead, Tenn.	do	313	180	140	....

Respondents explain that the interstate rates from Whitehead an
Russellville shown above were established by the Louisville & Nasl
ville to relieve quarrymen at those points from the disadvantag
caused by the low intrastate rate available to their competitors
Newsom and Mimms.

The Tennessee commission cites rates on crushed stone from Cer
lean, Ky., to a number of destinations in western Tennessee via th
Illinois Central, but comparisons of these rates with those from Ne
som and Mimms to the same points indicate that the intrastate mu
nicipal rates might properly be increased. To Dversburg, an im
portant consuming point, the rate from Cerulean is $1.30 and the di
tance 150 miles. From Newsom, 170 miles distant, the present rat
is $1 and the proposed rate $1.25. The rate from Cerulean to Mem
phis, 226 miles, is $1.40. From Mimms to Memphis, 246 miles, th
present rate is $1.10 and the proposed rate $1.38. Considerable stre
is laid on a line of low rates, evidently based on competitive consi
erations, from quarries near Columbia, Ill., to points in western Te
nessee on the Mobile & Ohio. To Jackson, Tenn., about 245 mil
from the Illinois quarries, the rate prior to Ex Parte 74 was 90 cen
and is now $1.20. The rate from Newsom to Jackson via th
34 Nashville, Chattanooga & St. Louis, a distance of 137 mile
is 90 cents and an increase to $1.13 is proposed. Fro
Mimms to Jackson, a distance of 161 miles, the rate is now $1 an
would be $1.25. The rates from the Illinois quarries are on such
low basis that they can not be considered a fair criterion for judgin
the reasonableness of the rates from Newsom and Mimms. Also
will be noted that even with the increases sought the latter rat
would be more favorably related to the interstate rates than the
were prior to August 26, 1920.

The principal points from which gravel is shipped are Chatt
nooga, Nashville, Knoxville, Camden, and Memphis. A large amou
of gravel is also shipped into Memphis, which is apparently the mo
important consuming point in the state. Most of the Tennessee lin
publish rates on gravel in the form of distance scales, but to th
more important destinations there are specific rates on a lower basi
fixed with reference to competitive conditions. Both the mileag
scales and the specific rates, applying on intrastate traffic, are no
relatively lower than those applicable on interstate shipments in
Tennessee, and the record shows numerous disruptions of adjus
ments of gravel rates similar to those which have been noted wit
respect to the rates on crushed stone.

To points south of Nashville on the Nashville, Chattanooga & S
Louis the interstate rates of that carrier from Chattanooga are out
line with its intrastate rates from other points. To Murfreesbor
118 miles from Camden and 119.5 miles from Chattanooga, th
rates from both points were 90 cents prior to Ex Parte 74. The ra
from Chattanooga is now $1.13. Tullahoma, an important co
suming point, is 155 miles from Camden and 82 miles from Chatt
nooga. An increase of 25 per cent in the rate from Chattanoo
has made it $1, putting it on a parity with that from Camden a

depriving Chattanooga shippers of an advantage in rates based on their shorter distance. In the same manner Camden has been given lower rates for greater distances to Bell Buckle and Fosterville.

The following table indicates the advantage accorded to Camden under the present relationship of rates to Memphis from various producing points:

To Memphis from—	Route.	Distance.	Rate prior to ex parte 74.	Present rate.
		Miles.	Cents.	Cents.
Camden, Tenn.	Nashv., Chatt. & St. L.	152	70	70
Batesville, Miss.	Illinois Central	59	..	87
Gravel Siding, Miss.	Southern Ry.	120	70	88
Morrison Miss.	do	120	70	88
Oldham, Miss.	do	117	70	88
Golden, Miss.	Illinois Central	133	..	87.5
Iuka, Miss.	Southern Ry.	116	70	88
Gravel Switch, Ky.	Illinois Central	189	..	100

35 To other destinations in western Tennessee rates from Camden, if increased 25 per cent, would not be unduly high in comparison with rates to the same places from interstate points. Thus, an increase from 60 to 75 cents for the haul of 68 miles from Camden to Union City via the Nashville, Chattanooga & St. Louis appears to be proper, in view of the fact that from Elco, Ill., via the Mobile & Ohio, the rate to the same point is $1.07 for a distance of 78 miles. To Jackson, 67 miles from Camden over the Nashville, Chattanooga & St. Louis, respondents seek an increase from 70 to 88 cents. The rate of the Mobile & Ohio to Jackson from Elco is $1.20 for a distance of 139 miles. From Gravel Switch, Ky., to Jackson there is a rate via the Illinois Central of $1 for 133 miles. To Martin, Tenn., 79 miles from Gravel Switch, the same rate applies. From Camden to Martin, 55 miles, the rate sought by the Nashville, Chattanooga & St. Louis is 88 cents, increased from 70 cents.

Shippers of gravel at Camden complain that they are unable under the present rates to sell gravel at points on the main line of the Illinois Central in western Tennessee in competition with the pit at Gravel Switch, Ky. As previously shown, the Illinois Central publishes a rate of $1 from Gravel Switch to Memphis, 189 miles, presumably to put the pit there in competition with Camden and the Mississippi pits. From Camden to Memphis, 152 miles, the present rate is 70 cents and the proposed rate 88 cents. The rate from Gravel Switch applies as maximum at intermediate points between Memphis and Wingo, Ky., 135 miles from Memphis. To many of those points, such as Dyersburg, Ripley, and Covington, Camden has an advantage of about 15 miles in distance, but as there are no joint rates in effect from Camden, the latter point is seriously

handicapped in competition with Gravel Switch. The present rate from Camden to Covington, constructed by combination on Gibbs, is $1.35. On behalf of the Nashville, Chattanooga & St. Louis it is stated that joint rates from Camden low enough to meet the rates from Gravel Switch could not be profitably divided between the two lines over which the traffic moves. It may be that Camden shippers are entitled to joint rates lower than the full combination, but considering the short hauls and other conditions it does not follow that the joint rates from Camden should be relatively no higher than the local rates of the Illinois Central from Gravel Switch.

From figures based on actual movements of stone and gravel during the year ended September 30, 1920, respondents estimate that the refusal of the Tennessee commission to permit the increases in rates on those commodities when used for road building is
36 costing the Louisville & Nashville, the Nashville, Chattanooga & St. Louis, and the Southern railways, in the aggregate, about $16,445 annually.

The record conclusively shows that with few exceptions the proposed rates on stone and gravel would not exceed respondents' interstate rates on these commodities between points in Tennessee and points in adjacent states for similar distances. The latter rates are shown by numerous comparisons to be relatively just and reasonable. In authorizing an increase in the rates on stone and gravel for commercial purposes the Tennessee commission impliedly approved the general level of those rates as increased. The lower rates on municipal shipments unjustly discriminate against and unduly prejudice interstate commerce.

Findings.

Subject to the reservations set forth in connection with our discussion of the rates on common brick and sewer pipe, in carloads, we find that respondents' intrastate rates on those commodities between points in Tennessee are not shown to cause any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand, and in interstate or foreign commerce on the other hand, or any undue, unreasonable, or unjust discrimination against interstate or foreign commerce.

We further find that the increases made by respondents in their interstate rates for the transportation of stone and gravel, in carloads, under our decision relating to the southern group in Ex Parte 74, results in reasonable charges for the interstate transportation of those commodities between points in Tennessee and points in adjoining states and that the failure of said respondents within the state of Tennessee correspondingly to increase their intrastate rates and charges for the transportation of stone and gravel when used in the construction of public highways and consigned to federal, state, county, or municipal authorities or their bona fide agents, in force on the date of our decision in Ex parte 74, has resulted in the

t and will result in the future in lower rates on those commodi-
than the corresponding interstate rates between points in Ten-
see and points in adjoining states and in undue prejudice to
sons and localities in interstate commerce between points in Ten-
see and points in adjoining states; in undue preference to per-
ns and localities in Tennessee; and in unjust discrimination against
erstate commerce.

We further find that said undue prejudice, preference, and dis-
mination can and should be removed by making increases in the
rastate rates for the transportation of stone and gravel, in car-
ds, when for use in the construction of public highways and con-
signed to federal, state, county, or municipal authorities or
their bona fide agents, in force on the date of our decision
in Ex Parte 74, which shall correspond with the increases
retofore made and now in effect as aforesaid in the interstate rates
the transportation of said commodities shipped in interstate com-
erce between points in Tennessee and points in adjoining states.

These findings are without prejudice to the right of the authori-
s of the state of Tennessee or of any other party in interest to
ply in the proper manner for a modification of our findings and
der as to any specific intrastate rate or rates for the transportation
the commodities named on the ground that the latter are not re-
ted to the interstate rate or rates in such a way as to contravene
e provisions of the interstate commerce act.

Schedules giving effect to these findings may be made effective on
t less than five days' notice.

An appropriate order will be entered.

Order.

t a General Session of the Interstate Commerce Commission Held
at Its Office, in Washington, D. C., on the 3d Day of August,
A. D. 1921.

No. 12132.

Tennessee Rates and Charges.

the Matter of Intrastate Rates and Charges in the State of Ten-
nessee.

This case being a proceeding instituted by the Commission upon
tition filed, and having been duly heard and submitted by the
rties, and full investigation of the matters and things involved
aving been had, and the Commission, on the date hereof, having
ade and filed a report containing its findings of fact and conclu-
ons thereon, which said report is hereby referred to and made a
rt hereof:

It is ordered, That the common carriers by steam railroad parties
this proceeding, namely, The Alabama Great Southern Railroad

Company; Arkansas & Memphis Railway, Bridge & Terminal Com
pany; Athens & Tennessee River Railroad Company; Carolina
Clinchfield & Ohio Railway; Central of Georgia Railway Company
Chattanooga & Montlake Railway; Chattanooga Station Company
Chicago, Memphis & Gulf Railroad Company; The Chicago, Rock
Island & Pacific Railway Company; The Cincinnati, New Orleans &
Texas Pacific Railway Company; East Tennessee & Western North
Carolina Railroad; Harriman & Northeastern Railroad Company
Illinois Central Railroad Company; Knoxville, Sevierville & Eastern
Railway Company; Laurel Railway Company; Laurel Fork Rail
way; Little River Railroad; Louisville & Nashville Railroad Com
pany; Memphis Terminal Corporation; Memphis Union Station
Company; Middle Tennessee Railroad Company; Missouri Pacific
Railroad Company; Mobile & Ohio Railroad Company; Morgan &
Fentress Railway Company; The Nashville, Chattanooga & St. Louis
Railway; Norfolk & Western Railway Company; Oneida & Western
Railroad Company; Pigeon River Railroad Company; Procter Coal
Company's Switch; St. Louis-San Francisco Railway Company;
Southern Railway Company; Tennessee Railroad Company; Ten
nessee & Carolina Southern Railway Company; Tennessee & North
Carolina Railway; Tennessee, Alabama & Georgia Railroad Com
pany and Charles Hicks, receiver; Tennessee, Kentucky & Northern
Railroad Company; Tennessee Copper Company's Railroad; Ten
nessee & Cumberland River Railroad Company; Unicoi Railway;
Union Railway (Memphis); Wauhatchie Extension Railroad Com
pany; Western & Atlantic Railroad; and Yazoo & Mississippi Valley
Railroad Company, according as they respectively partici
39 pate in the transportation, be, and they are hereby, notified
and required to cease and desist from practicing the undue
prejudice, undue preference and advantage, and unjust discrimina
tion found in said report to exist in the relation of interstate rate
for the transportation of stone and gravel, in carloads, when for use
in the construction of public highways and consigned to federal,
state, county, or municipal authorities or their bona fide agents, and
to establish, put in force, and maintain rates for the transportation
of said commodities in intrastate commerce within the state of Ten
nessee which shall exceed the rates of said respondents for the trans
portation of said commodities in effect July 29, 1920, and applicable
to such transportation, in amounts corresponding to the increases
heretofore made by said respondents and now in effect under Ex
Parte 74 referred to in said report, in said respondents' rates for the
transportation of said commodities in interstate commerce within
the state of Tennessee and between points in the state of Tennessee
and points in adjoining states; provided, however, that nothing in
this order shall be construed as requiring or authorizing any com
mon carrier to establish, put in force, or maintain any rate for the
transportation of property in intrastate commerce which is greater
than its corresponding rate contemporaneously in effect and ap
plicable to the transportation of property in interstate commerce
from, to, or at the same points.

It is further ordered, That nothing in this order shall be construed as prohibiting any carrier, party to this proceeding, from increasing any rate for the transportation of property in intrastate commerce, prescribed in this order, provided such increased rate does not exceed its corresponding rate contemporaneously in effect and applicable to the transportation of property in interstate commerce, and provided further that such increase is made pursuant to the laws of the state of Tennessee, and with the approval of the authorities of said state.

It is further ordered, That this order shall become effective, on or before October 13, 1921, upon notice to this Commission and to the general public by not less than five days' filing and posting in the manner prescribed in section 6 of the interstate commerce act, and remain in force until the further order of the Commission in the premises.

And it is further ordered, That a copy of this order be served upon each of the carriers named in the second paragraph of this order.

By the Commission.

[Seal of the Interstate Commerce Commission.]

[SEAL.] GEORGE B. McGINTY,
Secretary.

A true copy:

GEORGE B. McGINTY,
Secretary.

40 *Motion of the United States to Dismiss the Petition.*

Filed November 14, 1921.

United States of America, respondent, by its counsel, now comes and moves the court to dismiss the petition in the above-entitled cause at the cost of the petitioners.

As grounds for this motion it is shown—

1. It does not appear from the face of the petition or otherwise that the court has jurisdiction to entertain the same.

2. The order of the Interstate Commerce Commission runs against and is directed to Nashville, Chattanooga & St. Louis Railway, and other steam railroad carriers operating within The State of Tennessee, and does not run against and is not directed to The State of Tennessee, or The Railroad and Public Utilities Commission of Tennessee, neither of which, by reason whereof, has any standing in this court to maintain the petition against the United States.

41 3. The petition, with the exhibits attached thereto and made a part thereof, is without equity on its face and does not state any cause of action against the defendant; and the court may not grant the relief prayed or any part of the same.

4. The report of the Interstate Commerce Commission and order entered in pursuance thereof were made and entered after full hearing and due notice, and rest on substantial evidence adduced on the issues made by the parties, and the matters and things alleged in the petition and sought to be put in issue are foreclosed by the findings of fact.

5. It appears from the petition that the order of the Interstate Commerce Commission sought to be enjoined, set aside, annulled, or suspended was authorized by the Acts to Regulate Commerce and the Transportation Act, 1920, and that it was regularly made and entered by the Commission in a proceeding properly pending and conducted.

6. The petitioners have not in and by the petition shown that in making the order the Interstate Commerce Commission transcended the power conferred upon it by the statute or violated any right of the petitioners protected by the Constitution of the United States or any other right of the petitioners over which the court may exercise jurisdiction.

Wherefore, and for divers other good causes appearing on the face of the petition, more fully to be pointed out on the hearing hereof, respondent prays that its motion be sustained, and for such other and further action as may be appropriate.

BLACKBURN ESTERLINE,
Assistant Solicitor General.
LEE DOUGLAS,
United States Attorney.

42 *Motion for Hearing Before Three Judges.*

(Filed January 17, 1922.)

To the Honorable Judges of the United States District Court for the Middle District of Tennessee, Nashville Division, sitting in equity:

The petitioners in this cause, named hereinabove, by their solicitors of record, now come and move the Court that the motion filed on November 14, 1921 by the United States of America, to dismiss the petition herein, be set for hearing and final disposition on the earliest practicable date, to be fixed by the Court; and that said motion shall be heard and determined by three judges, of whom at least one shall be a circuit judge; and that counsel for all parties hereto may be notified by the Clerk of this Court of the date fixed by the Court for said hearing.

FRANK M. THOMPSON,
Attorney General and Reporter of Tennessee.
WM. H. SWIGGART, JR.,
Assistant Attorney General and Reporter of Tennessee.

43 *Appearance of Interstate Commerce Commission.*

(Filed January 16, 1922.)

To the Honorable Judges of said Court:

We hereby enter the appearance of the Interstate Commerce Commission as intervening defendant, and of ourselves as its counsel, in the above entitled case.

P. J. FARRELL.
J. CARTER FORT.

January 14, 1922.

44 *Order Allowing Interstate Commerce Commission to Intervene as a Party Defendant.*

(Entered February 20, 1922. Sanford, Judge.)

This cause coming on to be heard on the motion of the Interstate Commerce Commission, to be permitted to intervene as a party respondent herein, and the petition having been duly considered, and it appearing to the court that said Interstate Commerce Commission has such an interest in the subject matter of this suit as to make it a proper party respondent:

It is, therefore, considered by the court that said Interstate Commerce Commission, be and is hereby permitted to intervene as a party respondent and file such pleadings as from time to time may seem to it appropriate.

This order to be without prejudice in any proceedings heretofore had in this cause.

SANFORD,
Judge United States District Court of the Middle District of Tennessee.

Approved for entry:

45 *Order Fixing Date for Hearing on the Motion to Dismiss.*

(Entered January 2, 1922. Sanford, Judge.)

On motion of the petitioners, the written motion of the United States of America to dismiss the petition herein is set for hearing at nine o'clock A. M. Saturday, February 18th, in the Federal Court Room at Nashville, Tennessee, before three judges.

The clerk will forthwith give notice of this order to the solicitors of record for all parties and intervenors.

This January 31, 1922.

Approved for filing:

SANFORD,
Judge.

46 *Answer of the Interstate Commerce Commission.*

(Filed February 18, 1922.)

The Interstate Commerce Commission, intervening defendant the above-entitled suit, now and at all times hereafter saving a reserving to itself all manner of benefit and advantage of exceptio to the many errors and insufficiencies in the petitioners' petitio contained, for answer thereunto, or unto so much or such pa thereof as this defendant is advised is material for it to make answ unto, answer and says:

I.

Answering paragraph I of the petition, this intervening defen ant, which for convenience will be referred to hereinafter as t Commission, admits for the purposes of this suit, that the allegatio of fact contained in said paragraph are true.

II.

Answering paragraph II of the petition, the Commission admi for the purposes of this suit that the allegations of fact contained said paragraph are true, except that the Commission denies that t State of Tennessee, or its various governmental subdivisions, or t United States Government, or any one of them, is or will be i juriously affected by the order of the Commission as alleged in t last subdivision of said paragraph II.

III.

Answering paragraphs III, IV, and V of the petition, the Com mission admits and alleges that in Increased Rates 1920, 58 I. C. C 220, hereinafter called Ex parte 74, it authorized an increase of 2 per cent in freight rates on interstate traffic in the southern grou which includes Tennessee; that rates thus increased became effecti August 26, 1920; that tariffs publishing similar increased intrasta rates in Tennessee, as well as increased intrastate passenger far and other charges corresponding to those authorized for interst application in Ex parte 74, were allowed to go into effect short afterward by petitioner, the Railroad and Public Utilities Commi
sion of Tennessee, hereinafter called the Tennessee com
47 mission, except that certain proposed increased rates on roa
building materials, when consigned to Federal, State, county or municipal authorities or their bona fide agents, and on san gravel, brick, sewer pipe, fertilizer, and fertilizer material, wer suspended; that on November 19, 1920, the Tennessee commissio vacated its suspension order but prohibited an increase in rates o intrastate shipments of sewer pipe (earthen, clay, or concrete) an of stone and gravel, in carloads, when for use in building publi

highways and consigned to Federal, State, county, or municipal authorities or their bona fide agents.

The Commission further admits and alleges that it instituted a proceeding of investigation, No. 12132 entitled "In the Matter of Intrastate Rates and Charges in the States of Tennessee," under the provisions of section 13 of the interstate commerce act, pursuant to a petition of certain steam railroads operating in Tennessee, to determine whether the intrastate carload rates required by the Tennessee commission on sewer pipe (earthen, clay or concrete), on common brick, and on stone and gravel, when for use in the construction of public highways and consigned to Federal, State, county, or municipal authorities or their bona fide agents, were unlawful in their relation to interstate rates on the same commodities in that they caused or would cause any undue or unreasonable advantage, preference, or prejudice as between persons and localities in intrastate commerce, on the one hand, and interstate commerce, or foreign commerce, on the other hand, or any undue, unreasonable, or unjust discrimination against interstate or foreign commerce within the meaning of and in violation of the interstate commerce act; and to determine what rates and charges should be prescribed in order to remove such advantage, preference, prejudice, or discrimination, if any should be found to exist; that in said proceeding the full hearing provided for in section 13 of said act was accorded to each of the petitioners and to all interested parties; that at said hearing a large volume of testimony and other evidence, bearing upon said questions, was submitted to the Commission for consideration; that at said hearing and subsequently, both orally and in briefs filed
48 in said proceeding, said questions were fully argued and the matters involved in said proceeding were submitted to the commission for determination, whereupon the Commission made its report and order in said proceeding, which said report and order stated the Commission's findings, decision, conclusion, and requirements in the premises, and which said report and order are attached hereto, made a part hereof, and marked Exhibit A; that said report and said order were, and are, and each of them was and is, fully supported and justified by the record before the Commission in said proceeding.

The Commission further alleges that in making said report, findings, and order it considered and weighed carefully, in the light of its own knowledge and experience, every fact, circumstance, and condition called to its attention on behalf of the parties to said proceeding, including matters covered by the allegations in the petition herein. The Commission further alleges that said report, findings, and order were not made by it either arbitrarily or unjustly, or contrary to the relevant evidence, or without evidence to support them; that in making said report and said order it did not exceed the authority duly conferred upon it, or exercise that authority in an unreasonable manner.

Except as herein expressly admitted, the Commission denies the truth of each of and all the allegations contained in the petition herein in so far as they conflict either with the allegations in this

answer, or with either the statements or conclusions of fact included in the Commission's said report, findings, and order.

All of which matters and things the Commission is ready to aver, maintain, and prove as this honorable court shall direct, and hereby prays that said petition be dismissed.

INTERSTATE COMMERCE COMMISSION.
J. CARTER FORT,
Assistant Counsel.
P. J. FARRELL,
Of Counsel.

49 CITY OF WASHINGTON,
District of Columbia, ss:

Joseph B. Eastman, being duly sworn, deposes and says that he is a member of the Interstate Commerce Commission, the above-named intervening defendant, and makes this affidavit on behalf of said Commission; that he has read the foregoing answer and knows the contents thereof, and that the same is true.

JOSEPH B. EASTMAN.

Subscribed and sworn to before the undersigned, a notary public within and for the District of Columbia, this 14th day of February, 1922.

[Notary Seal.] ALFRED HOLMEAD,
Notary Public.

50 *Order Allowing the Illinois Central Railroad Company, the Louisville & Nashville Railroad Company and the Nashville, Chattanooga & St. Louis Railway to Intervene as a Party Defendant.*

(Entered February 20, 1922. Sanford, Judge.)

This cause coming on to be heard on the motion of the Illinois Central Railroad Company, the Louisville & Nashville Railroad Company ans The Nashville, Chattanooga, & St. Louis Railway to be permitted to intervene as parties respondent herein, and the petition having been duly considered, and it appearing to the court that said railroads have such an interest in the subject matter of this suit as to make them proper parties respondent;

It is, therefore, considered by the Court that said Illinois Central Railroad Company, Louisville & Nashville Railroad Company and the Nashville, Chattanooga & St. Louis Railway, be and the same are hereby permitted to intervene as parties respondent and file such pleadings as from time to time may seem to them appropriate.

This order to be without prejudice in any proceedings heretofore had in this cause.

Approved for entry:

SANDFORD,
Judge United States District Court of the Middle District of Tennessee.

51 (Entered February 20, 1922. Sanford, Judge.)

This cause coming on to be heard on the motion of the Illinois Central Railroad Company, The Louisville & Nashville Railroad Company and The Nashville, Chattanooga & St. Louis Railway, for authority to formally adopt as their own the motion to dismiss heretofore filed by and on behalf of the United States, and

It appearing to the Court that the motion should be granted,

It is, therefore, considered that said motion to dismiss as filed by and on behalf of the United States shall be considered the motion of the Illinois Central Railroad Company, the Louisville & Nashville Railroad Company and The Nashville, Chattanooga & St. Louis Railway.

Approved for entry:

SANFORD,
Judge United States District Court of the Middle District of Tennessee.

52 *Per Curiam Opinion on Motion to Dismiss.*

(Filed April 1, 1922. H. M. Doak, Clerk.)

Submitted February 18, 1922. Decided March —, 1922.

Before Denison, Circuit Judge, and Sanford and Ross, District Judges.

Per Curiam:

The State of Tennessee, acting both in its own behalf and upon the relation of the Railroad and Public Utilities Commission of Tennessee, joined with that commission in filing a bill of complaint directed against the United States. Since the purpose of the bill was to enjoin the enforcement of an order made by the Interstate Commerce Commission, proceedings were had pursuant to the jurisdiction and practice fixed for the Commerce Court under sections 207, 208 and 209 of the Judicial Code and the Act of October 22nd, 1913. (U. S. C. C. of 1916, Section 998.) Pursuant to the latter section, a motion for a preliminary injunction regularly came on to be heard before the court as now constituted. On such hearing the Illinois Central Railroad Company and the Nashville, Chattanooga and St. Louis Railway were permitted to intervene and to join in the motion made by the United States to dismiss the bill for lack of equity. The Interstate Commerce Commission also was permitted to and did intervene as a defendant and file its answer. Upon the hearing of the motion to dismiss, it was stated by counsel for the United States and for the intervening railroads that if the motion to dismiss were overruled, they did not desire to file any answer or further pleadings. It was also agreed between counsel for the State of Tennessee and counsel for the Interstate Commerce Commission that the latter's answer was not intended to raise any issue of fact and that the case was ap-

propriate for final hearing on the bill and answer. It was therefore agreed by counsel for all parties that the hearing upon the motion and upon bill and answer should be treated as a final hearing, and that a final decree might be entered thereon.

53 Prior to July 29th, 1920, the freight rates in Tennessee and adjoining states upon broken stone, cement and similar road building materials had been established by the Interstate Commerce Commission and by the State Utilities Commission within their respective fields at the same amounts in each. On the day named the Interstate Commerce Commission by its order "ex parte 74" authorized an increase of 25% in freight rates in this general territory in interstate traffic, and the railroads here intervening adopted this increase. They also filed with the State Commission a tariff making the same proportionate advance in their intrastate rates on all traffic. This was suspended by the State Commission and a hearing had, as a result of which the State Commission approved the increase as to all intrastate traffic, excepting that in road building materials consigned to the United States, or the state or a municipality therein, or consigned to a contractor for such public use. As to this excepted traffic the railroads were directed to maintain the formerly existing and lower rate.

Thereupon the railroads applied to the Interstate Commerce Commission to have the intrastate rate on this excepted traffic fixed by that Commission so as to include the same 25% advance which had been given on all interstate traffic. The railroads alleged that the order of the State Commission, which in effect, prescribed for the intrastate traffic in these fields a rate of 20% lower than that which had been established for the interstate shipments of the same materials, was an undue and unjust discrimination against interstate traffic. There was a full hearing before the Interstate Commerce Commission and it found that in this respect undue preference to persons and localities in Tennessee and unjust discrimination against interstate commerce did result, which should be removed by raising the intrastate rate on these articles shipped to the United States or to the state or counties or cities, to the same price charged against all shippers or consignees. This order was entered August

54 30th, 1921 and was identified as No. 12132. This is the order, the enforcement of which this suit is brought to enjoin.

The general power and jurisdiction of the Interstate Commerce Commission to fix an intrastate rate, as to which it had found the existence of discrimination and prejudice against interstate commerce, were not distinctly challenged by the bill; and since the hearing of the motion herein such jurisdiction and power have been definitely declared by the Supreme Court in the case of Wisconsin vs. United States, decided February —, 1921. The only question which is here for decision is one arising under section 22 of the Interstate Commerce Act, which so far as it is here material, declares—

"that nothing in this act shall prevent the carriage, storage, *storage* or handling of property free or at reduced rates for the United States, state or municipal governments, * * *"

Whether the effect of this section is to deprive the commission of jurisdiction to make an order preventing discrimination and preference in shipments for these favored parties is the controlling question.

Before reaching the merits we find that the right of the State to maintain this bill is challenged upon formal grounds. It is said that the State's only right to complain depends upon the order of the State Commission authorizing this preference, and that the order of that commission was without jurisdiction and is invalid. We doubt whether the existence of any valid order by the State Commission is essential. The right of the State, either in its own interest as a contingent shipper or in the right of its citizens, to attack an order of the Interstate Commerce Commission affecting rates within the state, seems not to be doubted. (North Dakota vs. C. & N. W. Ry. U. S. S. C. Jan'y 23, 1922.) If there had been no order by the State Commission and if Section 22 has the scope and effect now claimed for it, the State and its municipalities would have the right to negotiate with the railroads for the preferential treatment which Section 22 contemplates and to obtain such discrimination in their favor if they could. The Interstate Commerce Commission order now attacked denies this right and forbids the railroads to grant such a preference if they should wish to. It cannot be controlling that at present they do not so desire; they may change their minds; and this order would stand as a deterrent both against a change of policy by the railroads generally and against a tendency by any one of them to break away from the existing policy of all.

However, we see no substantial occasion to doubt the jurisdiction and power of the State Commission, when exercised in the lack of any action by the Interstate Commission. The former was created, and its general powers are fixed, by Chapter 10 of the Acts of 1897 of the Legislature of Tennessee. By section 8 it has power—"* * * to supervise and fix the rates * * * of railroad freight and passenger tariffs on the different railroads in this state."

Clearly this authority covers the action which has been here taken, unless there is restriction elsewhere in the act. Sections 15 and 17 prohibit any carrier from receiving from any person or corporation a greater or less compensation than it charges any other person or corporation for doing a like service in the transportation of like property under substantially like circumstances and conditions, and from giving any undue or unreasonable preference or advantage to any particular person or corporation or any particular description of traffic. These provisions are not direct limitations upon the power of the commission to authorize rates which do make discrimination; they rather imply the power of the commission to permit preference and discrimination if the commission shall decide that it is not undue or unjust or that the services involved are not under like circumstances and conditions; and their utmost indirect effect is to prohibit the fixing of such discriminatory rates as are in fact

undue and unjust. It is distinctly held in Interstate Comm
Commission vs. Baltimore & Ohio Railroad, 145 U. S. hereafter
cussed, that a preferential rate given to the state or municipa
is not necessarily unjust or undue; and it follows that section
and 17 do not necessarily deprive the Commission of jurisdic
to allow such preferential rates.

Section 24 of the Tennessee Act is somewhat similar to se
22 of the Interstate Commerce Act, and provides that the law sh
not prevent any railroad company from transporting freight a
duced rates for certain specified purposes, among which shipm
to a state or municipality are not mentioned. However
56 do not think this enumeration of permitted preferences
be taken as exclusive. Each one of the enumerated
erences involves a benefit which, if public at all, is so indirect
the right to make the preference would be doubtful unless it
specifically given. The enumeration should not be construe
exclude a case where the public benefit is as direct as it is wh
state or municipality actually pays the freight. As the Supr
Court said of a similar section in 145 U. S. at page 278,—"
section is illustrative, rather than exclusive."

If there ever was any doubt of the right of such a commissio
fix a rate for a particular service under special conditions at a fi
less than the maximum allowed for such general service (
Shore Railroad vs. Smith, 173 U. S. 684, 693) that doubt ca
survive the decision in Pennsylvania Railroad vs. Towers, 245 U
6, 17.

Being *this* convinced that the State, with or without the sup
of the State Commission's order, has a right to be heard as to
substance of its complaint, we pass to the meritorious question.

Sections 2 and 3 of the Interstate Commerce Commission
both before and after the amendment of February 28th, 1920, fo
discrimination in rates between persons with reference to like ser
in like traffic under similar circumstances and conditions, and fo
undue or unreasonable preference to any person or corporatio
in respect to any particular traffic. Section 22, already qu
expressly permits not merely reduced rates in favor of partic
named persons but even free carriage. It is the contention of
United States that when these three sections are read together,
tion 22 is so modified by Sections 2 and 3 that it remains for
commision to *deice* whether a preference which might arise u
Section 22, nevertheless might involve the previously forbidden
crimination or advantage. We cannot give this construction.
Interstate Commerce Commission vs. Baltimore & Ohio Rail
Company, 145 U. S. 263, 278, Section 22 was under consider
and it was expressly said that even in the absence of this se
free or reduced transportation of the property of the United S
or states or municipal governments would not necessarily b
unjust discrimination. This is obvious if for no other reason
because freight charges which are paid by the public
57 be in one way or another assessed back against the public
cluding the railroads, in the form of taxes, as well as be

transportation for the public may be exacted in partial consideration for the public rights which the carrier has received. It cannot be thought that transportation furnished to private shippers and that furnished to the public are given under substantially similar circumstances and conditions. Hence it cannot necessarily follow that every discrimination is unjust. We think it should be inferred that Section 22 is a legislative declaration of the fact recognized in the case just cited, and that its effect is to leave the Commission without jurisdiction to forbid the railroads from carrying freight for the public at a less price than it charges individuals for the same carriage of the same freight; in other words, it excludes this particular traffic from the rate structure which the Commission is authorized to erect and control, in still other words, there is freedom of discrimination.

This conclusion does not necessarily make it improper that such reduced rates should be given pursuant to a tariff regularly filed or should be subject to a measure of regulation and supervision, so that that authorized preference may not be abused or may not become a pretext or cover for some forbidden discrimination; but the reported actions of the Commission, so far as brought to our attention, do not claim such right of regulation, except that it may fix a maximum. (U. S. vs. Alabama Ry. 40 I. C. C. 405)

Of course this giving of a preference under Section 22 is wholly permissive; the section does not confer upon any municipality the right to demand a preference. Nevertheless, the existence of the power is of value to the municipalities. They thereby get the right to competition in rates among the carriers for this traffic. The carriers at present do not wish to compete in this particular, but any order which prevents them from so doing whenever they may desire to operate directly to prejudice and destroy the municipal right which is recognized and preserved by Section 22.

What has so far been said leads to the conclusion that the Interstate Commerce Commission would be without authority to
58 make an order applicable solely to interstate traffic and forbidding a preferential rate to a state or a city or county. The right of this Commission to regulate or fix an intrastate rate, whether arising under the former laws or under the Transportation Act of 1920, is collateral and incidental to its rights to regulate interstate traffic; the branch may overhand the intrastate field only because the branch is essential to the maintenance of the tree planted in interstate soil. The incident cannot exist without the principal fact to which it is collateral; the branch cannot keep its position if there is no tree. The Interstate Commission's whole power to regulate interstate Commerce is modified by the exception that it may not forbid discrimination in favor of a state. Its power to control intrastate commerce must be modified by the same exception.

We think the Interstate Commission order should be enjoined and the State Commission order should remain in force. Manifestly this result should follow only so far as the freight in question is to be carried "for the United States, state or municipal governments." The Preference should not be determined by the mere fact that the

government is or is not shipper or consignee. Precisely the proper provision seems to be made by the Interstate Commerce Commission Conference Ruling, No. 36, which permits the preference to be given only in case the title to the property passes to the government or is vested in the government at the point of the origin of its transportation. (Havens vs. Chicago Railway, 20 I. C. C. 156) No other formula now occurs to us by which it can be made certain that only the government will get the benefit of the preference.

Counsel may prepare and submit a final decree in accordance with these views.

A. C. DENISON
Circuit Judge.
EDWARD T. SANFORD,
J. W. ROSS, *District Judges.*

59 *Final Decree.*

(Entered April 24, 1922. A. C. Denison Circuit Judge; Edward T. Sanford, District Judge; J. W. Ross, District Judge.)

This cause came on to be heard at this term and was argued by counsel, upon the motions and pleadings on file and upon the stipulation of all parties in open court that no further pleadings or proofs were desired and that the cause should be submitted as upon final hearing; and thereupon upon consideration thereof and in accordance with the written opinion handed down by the court, it is ordered, adjudged and decreed as follows, viz:

1. That the several motions of the United States and intervenors herein to dismiss the petition, be and are overruled;

2. That the order of the Interstate Commerce Commission in the matter of intrastate rates and charges in the State of Tennessee, entered August 3, 1921, and identified on the docket of said Commission as No. 12,132, directing Steam Railroad Companies to establish, put in force and maintain rates for the transportation within the State of Tennessee of stone and gravel, in carloads, when for use in the construction of public highways and consigned to federal, state, county or municipal authorities or their bona fide agents, in excess of rates charged by said companies on such transportation at and prior to the time of the entry of said order, is adjudged to be void to the extent that the rates therein ordered to be established, put in force and maintained effect or apply to such transportation, for the United States, State or Municipal governments, of stone and gravel, the title to which has passed to the government or is vested in it at the point of the origin of its transporttation; and that to the extent that said order of the Interstate Commerce Commission is hereinabove adjudged to be void, and to that extent only, it be and hereby is annulled and set aside, and that the enforcement thereof be and hereby is perpetually enjoined;

60 3. That copies of this order be served upon the defendant and the intervenors herein within five days after the entry hereof; and

4. That this injunctional order is suspended for a period of fifteen ays after its entry within which period an appeal with supersedeas ay be applied for, if desired, or within which period application ay be made to the judge of the district, to grant such further sus-ension as may be necessary to put into effect according to law the ecessary revision of rate tariffs.

Approved for entry. April 24 1922.

A. C. DENISON,
Circuit Judge.
EDWARD T. SANFORD,
J. W. ROSS,
District Judges.

51 *Petition for Allowance of Appeal.*

Filed May 19, 1922.

To the Honorable the United States District Judge for the Middle District of Tennessee:

The several intervening carriers, the Illinois Central Railroad Company, the Louisville & Nashville Railroad Company and The Nashville, Chattanooga & St. Louis Railway, feeling aggrieved by the order and decree rendered and entered in the above entitled cause on the 24th day of April, 1922, do hereby appeal therefrom to the Supreme Court of the United States for the reasons set forth in the assignments of error filed herewith, and pray that this their appeal be allowed and that citation be issued as provided by law and that a transcript of the record, proceedings and papers upon which said order and decree was vested, duly authenticated, be sent
52 to the Supreme Court of the United States under the rules of such Court made and provided.

And your petitioners, now appellants, further pray that a proper order relating to the security be required of them be made.

JNO. BELL KEEBLE,
Attorney for L. & N. Railroad Company.
CHAS. N. BURCH,
Attorney for I. C. Railroad Company
FITZGERALD HALL,
Attorney for N., C. & St. L. Railway.

Filed in the Clerk's Office May 19, 1922.

H. M. DOAK,
Clerk of the United States District Court, Middle District of Tenn., Nashville Division,
By E. L. DOAK,
D. C.

63 *Order Allowing Appeal.*

On motion of Charles N. Burch, John Bell Keeble and Fitzgerald Hall, Esquires, solicitors and counsel for appellant carriers, it is hereby ordered that an appeal to the Supreme Court of the United States from the order and decree heretofore on April 24th, 1922, entered and filed in this cause in the United States District Court, Middle District of Tennessee, Nashville Division, be and the same is hereby allowed, and that a certified transcript of the record, testimony, exhibits, stipulations and all proceedings be forthwith transmitted to said Supreme Court of the United States.

It is further ordered that the bond on appeal for appellant carriers, towit, the Illinois Central Railroad Company, the Louisville & Nashville Railroad Company and The Nashville, Chattanooga & St. Louis Railway shall be fixed in the sum of Two hundred and fifty dollars and said bond having been given by said appellants, is approved.

64 This May 20, 1922

EDWARD T. SANFORD,
United States District Judge,
Middle District of Tennessee.

Filed in the Clerk's Office, United States District Court, Middle District of Tenn., Nashville Division, May 20, 1922.

H. M. DOAK,
Clerk U. S. Dist. Court.
By N. T. ARNETT,
D. C.

65 *Assignment of Errors.*

Filed May 19, 1922.

Now come the respondent and the intervenors, now appellants, in the above entitled cause and file the following assignment of errors and upon them and each of them will rely upon their prosecution of an appeal in said cause from the order and decree made by this Honorable Court on the 24 day of April, 1922.

I.

Error is assigned upon the said order and decree because the Court erred in granting an injunction on the ground that the order of the Interstate Commerce Commission, (identified in the record as No. 12132), was beyond its jurisdiction and void.

II.

66 Error is assigned upon the said order and decree because the Court erred in holding and decreeing that the order of the Railroad and Public Utilities Commission of the State of Ten-

ssee dated November 19, 1920 was made in the legal exercise by id Commission of the powers vested in it by the statutes and laws the State of Tennessee.

III.

Error is assigned upon said order and decree because the Court rred in holding and decreeing that the Interstate Commerce Commission has under no circumstances and conditions any power over ither intrastate or interstate rates when the consignor and consignee ome within the excepted classes set forth in Section 22 of the Interstate Commerce Act, to wit: the United States, the States, counties nd municipal governments.

IV.

Error is assigned upon said order and decree because the Court rred in holding and decreeing that the Interstate Commerce Commission's power to regulate rates so that they may conform to Sections 2 and 3 of the Act to Regulate Commerce is modified by the exception contained in Section 22 of said Act that it may not forbid perference in favor of the United States, a State or the political subdivisions thereof.

V.

Error is assigned upon said order and decree because the Court erred in overruling the motion of the United States, joined in by the Interstate Commerce Commission and the intervening railroad companies, to dismiss the petition or bill of complaint of complainants for lack of equity on its face.

67

VI.

Error is assigned upon said order and decree because the Court erred in enjoining and setting aside the order of the Interstate Commerce Commission (identified in the record as No. 12132), fixing certain intrastate rates in Tennessee on certain road making material when transported as the property of the United States, the State of Tennessee, or a county or municipality thereof.

VII.

Error is assigned upon said order and decree because the Court erred in holding that the Interstate Commerce Commission had exceeded its authority and jurisdiction in fixing intrastate rates in Tennessee on certain road making material when transported as the property of the United States, the State, a county or a municipality thereof.

VIII.

Error is assigned upon said order and decree because the Court erred in holding that the State of Tennessee, or the Railroad and

Public Utilities Commission of the State of Tennessee has power and authority to require carriers to grant preferential rates on intrastate traffic in Tennessee in favor of the United States, the State of Tennessee, or a county or municipality thereof, and power further to require carriers to transport such traffic at rates less than those fixed by the State Railroad and Public Utilities Commission as reasonable for the transportation of the same traffic under similar circumstances and conditions for other shippers in general.

IX.

Error is assigned upon said order and decree because the Court erred in construing Section 22 of the Act to Regulate Com-
68 merce as being dominant over Sections 2 and 3 of said Act and not subservient and subordinate to said Sections 2 and 3 of said Act.

Wherefore, appellants pray that said order and decree be reversed and that said United States District Court for the Middle District of Tennessee, Nashville Division, be ordered to enter a decree reversing its decision in said cause.

LOUISVILLE & NASHVILLE RAILROAD COMPANY,
By JOHN BELL KEEBLE,
Atty.
ILLINOIS CENTRAL RAILROAD COMPANY,
By CHAS. N. BURCH,
Atty.
THE NASHVILLE CHATTANOOGA & ST. LOUIS RAILWAY,
By FITZGERALD HALL,
Atty.

Filed in the clerk's office, May 19, 1922.

H. M. DOAK,
Clerk of the United States District Court,
Middle District of Tenn., Nashville Division.

69 *Citation on Appeal.*

To the State of Tennessee, B. A. Enloe, Harvey H. Hannah, Julian H. Campbell, Esquires, members of and constituting the Railroad and Public Utilities Commission of the State of Tennessee; Alfred A. Taylor and Frank M. Thompson, Esquires, Governor and Attorney General respectively of the State of Tennessee, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States at the City of Washington in the District of Columbia within thirty days from the date hereof,

ursuant to an order allowing appeal filed and entered in the office of the Clerk of the District Court of the United States for the Middle District of Tennessee, Nashville Division, from the order and decree of said Court, signed, filed and entered n the 24th day of April, 1922, in that certain suit being in equity No. 3604 wherein the State of Tennessee, Railroad & Public Utilities Commission of Tennessee and the State of Tennessee, on relation of the Railroad and Public Utilities Commission of Tennessee, are petitioners or complainants, now appellees, and the United States is respondent, and the Interstate Commerce Commission, Louisville & Nashville Railroad Company, Illinois Central Railroad Company and The Nashville, Chattanooga & St. Louis Railway are nterveners to show cause, if any there be, why the order and decree rendered against said respondent, the United States, as in said order allowing appeal mentioned should not be corrected and why justice hould not be done to the parties in that behalf.

Witness the Honorable Edward T. Sanford, Judge of the United States District Court for the Middle District of Tennessee, Nashville Division, this 20 day of May, 1922.

EDWARD T. SANFORD,
United States District Judge for the Middle District of Tennessee.

Filed in the office of the Clerk of the United States District Court for the Middle District of Tennessee, Nashville Division, on May 20, 1922.

H. M. DOAK,
U. S. District Court Clerk,
By N. T. ARNETT,
D. C.

Due and legal service of the within citation is hereby acknowledged, copy received and further service and notice waived. Copy of petition for appeal, order allowing appeal and assignments of error also received and accepted, this 20 day of May, 1922.

WM. H. SWIGGART, JR.,
Assistant Attorney General of the State of Tennessee and Attorney for Complainants and Appellees.

71 *Appeal Bond.*

(Filed May 20, 1922.)

Know all men by these presents that we, the Louisville & Nashville Railroad Company, the Illinois Central Railroad Company and The Nashville, Chattanooga & St. Louis Railway, principals, and Fitzgerald Hall and W. R. Cole as sureties, are held and firmly bound unto the State of Tennessee, the Railroad and Public Utilities

Commission of Tennessee, in the sum of Two hundred and fifty Dollars, lawful money of the United States, to be paid to them and their respective successors, to which payment, well and truly to be made, we bind ourselves and each of us jointly and severally and each of our successors, heirs and assigns, by these presents.

Signed and sealed this the 20 day of May, 1922.

Whereas, the above named Louisville & Nashville Railroad Company, the Illinois Central Railroad Company and The Nashville, Chattanooga & St. Louis Railway, have prosecuted an appeal
72 to the Supreme Court of the United States to reverse the order and decree of the United States District Court for the Middle District of Tennessee, Nashville Division, rendered on April 24, 1922 in the above entitled cause;

Now, therefore, the condition of this bond is such that if the above named Louisville & Nashville Railroad Company, Illinois Central Railroad Company and The Nashville, Chattanooga & St. Louis Railway shall prosecute their said appeal to effect and answer all costs if they fail to make good their plea, then this obligation shall be void, otherwise to remain in full force and effect.

LOUISVILLE & NASHVILLE RAILROAD COMPANY,
By JOHN BELL KEEBLE,
Principal.
ILLINOIS CENTRAL RAILROAD COMPANY,
By CHAS. N. BURCH,
Principal.
THE NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY,
By FITZGERALD HALL,
Principal.
FITZGERALD HALL,
Surety.
W. R. COLE,
Surety.

This bond is approved, this May 20, 1922.

EDWARD T. SANFORD,
United States District Judge,
Middle District of Tenn.

Filed in the Clerk's Office, this May 20, 1922.

H. M. DOAK,
Clerk of the United States District Court,
Middle District of Tennessee,
Nashville Division.
By N. T. ARNETT,
D. C.

3 *Statement of Evidence to be Included in the Record on Appeal in the Above Cause, Prepared, Approved, and Filed to Conform to Equity Rule No. 75.*

Upon the hearing of said cause the complainant introduced no evidence save Exhibits Numbers A and B, filed with and as a part of the original bill of complaint.

Neither respondent nor intervenors introduced any evidence nor filed any affidavits. Said Exhibits A and B are not of such character as to admit of substantial condensation and on that account need not be set forth herein.

We agreed that the above statement is a full compliance with Equity Rule No. 75, and that the same may be approved by the Judge of the United States District Court for the Middle District of Tennessee, Nashville Division, in conformity to said Rule to be included in the record of the cause on appeal to the Supreme Court of the United States.

This May 20, 1922

JOHN BELL KEEBLE,
CHAS. N. BURCH,
74 FITZGERALD HALL,
Attorneys for Appellants.
FRANK M. THOMPSON,
Attorney General;
WM. H. SWIGGART, JR.,
Attorneys for Appellees.

The above statement prepared conformably to Equity Rule No. 75 having been presented to me and the same having been agreed to by counsel for the respective parties to the cause, the same is hereby approved. Let the same be filed and become a part of the record for the purpose of appealing the cause. This May —, 1922.

—— ——,
Judge United States District Court.

Filed in the Clerk's office, May 20, 1922.
H. M. DOAK,
Clerk United States District Court,
Middle District of Tennessee,
Nashville Division.
By N. T. ARNETT,
D. C.

75 *Præcipe for Transcript of Record.*

To H. M. Doak, clerk of the District Court of the United States of the Middle District of Tennessee, Nashville Division:

Please prepare forthwith a certified transcript of the record in the above entitled cause for the appeal of the Louisville & Nashville Railroad Company, the Illinois Central Railroad Company and The Nash-

ville, Chattanooga & St. Louis Railway, intervenors, from the order and decree of the Court in the above mentioned cause, made and entered April 24, 1922, which record is to consist of the following:

1. Verified bill of complaint or petition with affidavit of A. A. Taylor, Esquire, Governor of the State of Tennessee, together with Exhibits A and B and endorsements showing service on respondent the United States.

76 2. Motion of the United States to dismiss the petition.

3. The State's motion to set the Government's motion to dismiss for hearing before three Federal Judges.

4. Entry of appearance by the Interstate Commerce Commission and order permitting the same.

5. Order fixing date for hearing the motion to dismiss.

6. Answer of the Interstate Commerce Commission, omitting Exhibit A thereto, which is the same as Exhibit B to the original bill of complaint.

7. Order permitting the Illinois Central Railroad Company, the Louisville & Nashville Railroad Company and The Nashville, Chattanooga & St. Louis Railway to intervene as parties respondent.

8. Order permitting said three intervening carriers to adopt as their own the motion filed by the Government to dismiss the bill of complaint.

9. Opinion of the Court.

10. Final decree.

11. Petition for appeal, order granting same, together with assignments of error filed therewith.

12. Citation on appeal and acknowledgment of service thereof.

13. Appeal bond.

14. The evidence to be included in the record as prepared and stated by appellants lodged in the Clerk's office at the time of filing the præcipe under Equity Rule No. 75B, together with the agreement of counsel.

15. This præcipe and the acknowledgment by appellees' counsel of receipt of copy thereof and written agreement that it includes the portions of the record necessary to be incorporated into the transcript on intervenors' appeal.

May 20, 1922.

JOHN BELL KEEBLE,
CHAS. N. BURCH,
FITZGERALD HALL,
Attorneys for Intervening Carriers.

The original complainants or petitioners, appellees, hereby acknowledge the receipt of copy of the foregoing præcipe and ee that it indicates and includes all the portions of the record neces- to be incorporated into the transcript of intervenors' appeal rein referred to.

This May 20, 1922.

WM. H. SWIGGART, JR.,
Assistant Attorney General of the State of Tennessee and Attorney for Complainants, now Appellees.

Filed in the Clerk's Office, May 20, 1922.

H. M. DOAK,
Clerk of the United States District Court for the Middle District of Tenn., Nashville Division,
By C. T. VESTER,
D. C.

UNITED STATES OF AMERICA,
Middle District of Tennessee,
Nashville Division:

I, H. M. Doak, Clerk of the District Court of the United States, and for the said District, do hereby certify that the foregoing is a ue, full, correct and complete transcript of the record as indicated d called for by the præcipe on appeal filed by the intervening de- ndants Nashville, Chattanooga and St. Louis Railway, et al. in the se of State of Tennessee, the Railroad and Public Utilities Com- ission of Tennessee, etc., against the United States, as the same ap- ears and remains on file and of record in my office in Nashville.

Witness my hand and the seal of the said Court, this the 20th day f May, 1922.

[Seal of District Court of the U. S., Middle District, Tenn.]

H. M. DOAK,
Clerk.
By C. T. VESTER,
Deputy Clerk.

79 In the District Court of the United States for the Middle District of Tennessee, Nashville Division.

In Equity.

No. 3604.

THE STATE OF TENNESSEE, THE RAILROAD AND PUBLIC UTILITIES Commission of Tennessee, and The State of Tennessee on Relation of the Railroad and Public Utilities Commission of Tennessee, Petitioners,

versus

THE UNITED STATES Respondent.

On motion of Charles N. Burch, John Bell Keeble and Fitzgerald Hall, Esquires, solicitors and counsel for appellant carriers, it is hereby ordered that appeal to the Supreme Court of the United States from the order and decree heretofore on April 24th, 1922 entered and filed in this cause in the United States District Court Middle District of Tennessee, Nashville Division, be and the same is hereby allowed, and that a certified transcript of the record, testimony, exhibits, stipulations and all proceedings be forthwith transmitted to said Supreme Court of the United States.

It is further ordered that the bond on appeal for appellant carriers, to wit, the Illinois Central Railroad Company, the Louisville & Nashville Railroad Company and The Nashville, Chattanooga & St. Louis Railway shall be fixed in the sum of Two Hundred and Fifty Dollars; and said bond having been given by said appellants is approved.

80 This May 20, 1922.

EDWARD T. SANFORD,
United States District Judge,
Middle District of Tennessee.

Filed in the Clerk's Office, United States District Court, Middle District of Tenn., Nashville Division, May 20, 1922.

H. M. DOAK,
Clerk U. S. Dist. Court,
By N. T. ARNETT,
D. C.

[Endorsed:] Filed May 20, 1922. H. M. Doak, Clk., by N. T. Arnett, D. C.

81 In the District Court of the United States for the Middle District of Tennessee, Nashville Division.

No. 3604.

THE STATE OF TENNESSEE, THE RAILROAD AND PUBLIC UTILITIES Commission of Tennessee, and The State of Tennessee on Relation of the Railroad and Public Utilities Commission of Tennessee, Petitioners,

vs.

THE UNITED STATES Respondent.

Citation on Appeal.

To the State of Tennessee, B. A. Enloe, Harvey H. Hannah, Julian H. Campbell, Esquires, members of and constituting the Railroad and Public Utilities Commission of the State of Tennessee; Alfred A. Taylor and Frank M. Thompson, Esquires, Governor and Attorney General respectively of the State of Tennessee, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States at the City of Washington in the District of Columbia within thirty days from the date hereof, pursuant to an order allowing appeal filed and entered in the office of the Clerk of the District Court of the United States for the
82 Middle District of Tennessee, Nashville Division, from the order and decree of said Court, signed, filed and entered on the 24th day of April, 1922, in that certain suit being in equity No. 3604 wherein the State of Tennessee, Railroad & Public Utilities Commission of Tennessee and the State of Tennessee, on relation of the Railroad & Public Utilities Commission of Tennessee, are petitioners or complainants, now appellees, and the United States is respondent, and the Interstate Commerce Commission, Louisville & Nashville Railroad Company, Illinois Central Railroad Company and The Nashville, Chattanooga & St. Louis Railway are intervenors to show cause, if any there be, why the order and decree rendered against said respondent, the United States, as in said order allowing appeal mentioned should not be corrected and why justice should not be done to the parties in that behalf.

Witness the Honorable Edward T. Sanford, Judge of the United States District Court for the Middle District of Tennessee, Nashville Division, this 20th day of May, 1922.

EDWARD T. SANFORD,
United States District Judge for the Middle District of Tennessee.

Filed in the office of the Clerk of the United States District Court for the Middle District of Tennessee, Nashville Division, on May 20, 1922.

H. M. DOAK,
U. S. Dist. Ct. Clerk,
By N. T. ARNETT,
D. C.

Due and legal service of the within citation is hereby acknowledged, copy received and further service and notice waived. Copy of petition for appeal, order allowing appeal and assignments of error also received and accepted, this 20 day of May, 1922.

WM. H. SWIGGART, JR.,
Assistant Attorney General of the State of Tennessee and Attorney for Complainants and Appellees.

[Endorsed:] Filed May 20, 1922. H. M. Doak, Clk., by N. T. Arnett, D. C.

Endorsed on cover: File No. 28,943. M. Tennessee D. C. U. S. Term No. 988. The Nashville, Chattanooga & St. Louis Railway, Illinois Central Railroad Company, and Louisville & Nashville Railroad Company, appellants, vs. The State of Tennessee, B. A. Enloe, Harvey H. Hannah, Julian H. Campbell, members of and constituting the Railroad and Public Utilities Commission of the State of Tennessee, et al., &c. Filed May 23, 1922. File No. 28,943.